SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 289.

HUBERT WORK, SECRETARY OF THE INTERIOR, APPELLANT,

vs.

STATE OF LOUISIANA.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Record from Supreme Court of District of Columbia	1	1
Bill of complaint	1	1
Plaintiff's Exhibit A, letter Clay Tallman, Commissioner, to register and receiver, Baton Rouge, La., Nov. 13, 1909	5	5
Plaintiff's Exhibit B, order and opinion of First Assistant Secretary of the Interior denying motion for exercise of supervisory authority, Sept. 16, 1921	24	26
Rule to show cause	26	28
Motion to dismiss	26	28
Return to rule to show cause	27	29
Order overruling motion to dismiss	27	29
Decree	27	30
Order for stay	28	31
Assignment of errors	29	31
Designation of record	29	32
Clerk's certificate	30	32
Proceedings in Court of Appeals	31	33
Argument of cause	31	33
Opinion, Van Orsdel, J	33	33
Decree	41	37
Order substituting parties appellant	42	37
Motion for rehearing	43	38
Order denying rehearing and staying mandate	52	44
Petition for appeal	53	44
Assignment of errors	55	45
Order allowing appeal	58	46
Citation and service [omitted in printing]	59	46
Præcipe for transcript of record	61	47
Clerk's certificate	62	47

1 Supreme Court of the District of Columbia.

STATE OF LOUISIANA, PLAINTIFF, *vs.* ALBERT B. FALL, SECRETARY OF THE INTERIOR, defendant.	In Equity, No. 39570.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Bill of complaint.

Filed November 10, 1921.

[Title omitted.]

To the Supreme Court of the District of Columbia, holding an equity court:

The State of Louisiana, plaintiff, by its attorney general, A. V. Coco, brings this, its bill of complaint, on its own behalf, against Albert B. Fall, a citizen of the State of New Mexico, residing in the District of Columbia, in respect to the matters and things hereinafter set forth.

I.

That at the several times hereinafter referred to the defendant, Albert B. Fall, was, and still is, Secretary of the Department of the Interior, and as such has charge of the administration of the laws of the United States relating to the public lands and the administration of all land grants made by Congress, including any portion of the public lands; that he is sued in his official capacity as such Secretary of the Interior, as hereinafter set forth.

II.

That, by the act of March 2, 1849 (9 Stat. 352), there was granted to the State of Louisiana the whole of those swamp and overflowed lands which may be or are found unfit for cultivation to aid the State in constructing the necessary levees and drains to reclaim the swamp and overflowed lands within said State, and by the second
2 section of said act it was made the duty of the Secretary of the Treasury (afterwards the Secretary of the Interior) to make out a list of swamp lands within said State, and the fee simple title to said lands vested in the State of Louisiana on the approval of said list.

III.

That by the act of Congress approved September 28, 1850 (9 Stat. 519), a general grant of swamp lands within the limits of the several States was made, which also included the State of Louisiana.

IV.

That the history of procedure by the Land Department in the adjustment of these grants to the State of Louisiana is reviewed, and specific instructions given for a speedy and final adjustment of said grants, in the departmental order of October 1, 1903 (32 L. D. 271), which is made a part of this bill as though specifically set forth herein.

V.

That the specific lands involved in this suit are in township 18 N., R. 14 W., in the State of Louisiana, and are by the public land plat of survey of 1838 shown to be included in Cross Bayou and Cross & Soda Lakes, but are disclosed and in the usual manner identified by the later plat of survey of said township made in 1871 and therein returned as swamp and overflowed lands.

VI.

That on consideration of the claim of the State of Louisiana to the lands the subject of this bill, the Commissioner of the General Land Office, in his decision of November 13, 1919, addressed to the register and receiver at Baton Rouge, Louisiana, specifically found from the field notes of the survey of 1871 that these lands are swamp or overflowed and, if nonmineral in character, inure to the State under its grant and may be patented pursuant thereto; but because of the fact that these lands were on July 2, 1910, within a petroleum reserve, it was required of the State that it assume the burden of proving that they do not possess value for oil or gas deposits under penalty of cancellation or forfeiture of the State's claim for failure to apply for a hearing to that end. A copy of this decision is attached hereto, marked "Plaintiff's Exhibit A," and is made a part of this bill.

VII.

That from said decision of the Commissioner of the General Land Office the State duly appealed to the Secretary of the Interior, and under date of July 18, 1921, that officer affirmed the action of the Commissioner of the General Land Office as taken in his said decision of November 13, 1919.

3 VIII.

That thereupon a motion for exercise of supervisory authority was filed on behalf of the State of Louisiana, which motion was denied

by the Secretary of the Interior under date of September 16, 1921, wherein he held:

"(1) Mineral lands not being expressly included within the terms of the swamp grant either of 1849 or 1850, do not inure to the State. (2) The interest of the State is inchoate and incomplete until title is vested and the fee simple title only passes upon approval under the act of 1849 and by patent pursuant to the act of 1850. (3) The authority of the Land Department to inquire into and determine all rights and equities claimed as against the Government does not cease until the legal title has passed. (4) A complete and perfected interest corresponding to full equitable title does not accrue to or vest in the State as to any tract of land until the same has been finally identified as of the class and condition contemplated by the granting act. (5) The question as to the mineral or non-mineral character of claimed swamp land is open for investigation and adjudication up to and until the time of patent under the act of 1850 and up to the date of the Secretary's approval under the act of 1849.

"Nothing presented by counsel persuades the department that the holding on appeal in this case is in error. Upon the records of the land department the tracts are impressed with a prima facie mineral character by reason of the subsisting petroleum withdrawal. The State has been accorded due opportunity to show that such is not the character of the lands and that they are, in fact, not mineral bearing, failing in which, it was held, the swamp-land claim must stand rejected.

"The conclusions reached, in the decision rendered upon appeal herein, are adhered to and the present motion is denied."

IX.

That the State of Louisiana is advised, and therefore alleges, that the said act of March 2d, 1849, was a present grant to the State of Louisiana of all swamp and overflowed lands within the limits of that State; that the said act of September 28th, 1850, was likewise a present grant of all swamp and overflowed lands; that the character of the lands conveyed in said acts was the whole of the swamp and overflowed lands within the limits of the State, and neither by the terms of the said act nor otherwise were any swamp or overflowed lands excepted or reserved out of the said grant by reason of their mineral character.

That if the Secretary of the Interior had been correct in his conclusion of law that mineral lands were excepted from the swamp-land grant, then that the further conclusion would have been necessary that said lands must have been known to possess such mineral character at the date the grant was made, or, at least, at the time of the filing and approval of the plat of survey of the township, by which survey the lands were identified as of the character granted to the State.

4 That in ignoring the rights of the State to the lands found by him as a matter of fact to be swamp and overflowed lands and to have been identified as such by the said survey of 1871, the said defendant is exceeding his authority, power, and jurisdiction in the making of the unusual and unlawful requirement of imposing upon the State the burden of showing that the lands have, as a present fact, no mineral value, and, particularly, in denying the right of the State to said lands because it has not undertaken to discharge the burden thus illegally put upon it.

X.

That, neither in 1849, nor in 1850, the date of the granting acts above referred to, nor in 1871, in which year the said lands were officially surveyed and returned by the surveyor general as swamp and overflowed lands, were any minerals of any character known to exist in the said lands or within any part of the territorial limits of said petroleum reserve of July 2d, 1910.

XI.

That plaintiff says that it has completely exhausted its rights of appeal and petition before the Department of the Interior, and that its only remaining remedy is by appropriate appeal to the courts for relief from the rulings aforesaid, and which rulings, as plaintiff is advised by counsel, and accordingly so avers, are erroneous in matter of law.

XII.

And plaintiff further states that the defendant will, unless restrained by the order of this court, carry his order for the cancellation or rejection of plaintiff's claim to these lands into effect and thereupon make disposition of said lands to others, thereby making a multiplicity of suits necessary, all to the irreparable loss, damage, and injury of your plaintiff, and for which plaintiff has no adequate remedy at law and is otherwise remediless except in equity.

Wherefore, the premises considered, the plaintiff prays:

(1) That the process of this court issue, directed to the defendant, Albert B. Fall, Secretary of the Interior, requiring him to appear and make answer unto the foregoing bill of complaint, but not under oath, answer under oath being hereby expressly waived.

(2) That upon the filing of this bill, or upon such short day thereafter as shall be fixed by the court, a preliminary order may be issued herein, restraining and enjoining pendente lite the defendant, his successors in office, and each, every and all persons claiming under his authority or control, from taking further action in enforcement of the ruling herein complained of.

(3) That, upon final hearing, said restraining order and injunction may be made perpetual, and that mandatory injunction may

issue against said defendant, commanding and requiring that the certain ruling or decision herein complained of be vacated and set aside, and that the right granted to the plaintiff under the acts aforesaid be recognized, respected, and given full legal force and effect, as by the said acts provided.

(4) And that plaintiff may have all such other and further relief as the nature of its case may demand and require and as may be agreeable to equity.

A. V. Coco,
Atty. Genl. for the State of La.

F. W. Clements,
Thigben, Herold & Lee,
Of Counsel.

November 10, 1921. Service this day accepted.

Edwin A. Booth,
C. E. Wright,
Atty. for Deft.

Plaintiff's Exhibit "A," to complaint.

In reply please refer to
655506 "G" RWP.

Department of the Interior,
General Land Office,
Washington, November 13, 1919.

Address only the Commissioner of the General Land Office.

Swamp-land claims in T. 18 N., R. 14 W.

Register and Receiver,
Baton Rouge, Louisiana.

Sirs: Under date of October 2, 1916, Fred J. Grace, register of the State land office, addressed this office concerning the claims asserted at various times by the State of Louisiana under the swamp-land grant to lands in T. 18 N., R. 14 W., shown by the survey of 1838 to be in Cross Bayou and Cross and Soda Lakes, and disclosed as land by the survey of 1871. Following a detailed description of these claims and a reference to a number of decisions bearing upon the question, the register goes on to say:

"The survey and field notes of 1838 show, as was stated by the surveyor general (Lewis), that the lands described in list 93 are in Cross and Soda Lakes, and they were and are navigable streams and belong to the State by right of its sovereignty, but they were in 1839 and 1850, and are yet, overflowed lands.

"The question to be determined by your department is one of fact: Whether the lakes are navigable or not. Under either conclusion by your department the lands come to the State of Louisiana, under the ruling of the Attorney General above referred to; if navigable, by right of its inherent sovereignty; if nonnavigable, under the swamp-land grants of 1849 and 1850.

"But if the land comes to the State by rights of its inherent sovereignty, the State desires to know what course will be pursued by your department. The local U. S. land office has allowed, and is permitting, entries to be made on the lands in this township, said lands being in the bed of these lakes, some selected as
6 swamp lands and others not. Those selected as swamp lands the State will be put to the trouble and expense and annoyance of proving their character in a hearing before the register and receiver, and the lands entered but not selected by the State, the State will not be permitted to be heard for the reason that the lands are not selected as swamp lands. But the State desires that your department take some action in this matter and advise the local officers of the U. S. Land Office to cancel and stop allowing entries on these lands until their true character has been determined by your department, for the State claims them by virtue of its sovereignty; and if its claim is not sustained, it maintains it has title to said land under the swamp-land grants of 1849 and 1850.

"The State of Louisiana transferred most of the land in the bed of Soda and Cross Lakes, in T. 18 N., R. 14 W., La. mer., many years ago, to the Caddo Levee Board, which has in turn disposed of the land, and now it is held by individuals."

The register also called attention to the decision favorable to the State in the case of Cross Lake Shooting and Fishing Club vs. Louisiana (224 U. S. 632).

The records here disclose that following a preliminary withdrawal of December 5, 1908, the township in question was, on July 2, 1910, included in petroleum reserve No. 4, and in view of this and other complications found to exist this office under date of April 23, 1919, submitted the matter to the department for instructions upon, as stated by the department in its response of September 2, 1919 (D–45134), substantially the following points:

1. "Should the Land Department be guided or controlled in its future actions by language contained in the decision rendered in the case of Cross Lake Club v. Louisiana, supra?

2. "Should Cross Lake and Soda Lake be deemed and treated as navigable and title to their beds considered as having vested in the State, following the holding made by the Acting Attorney General on September 11, 1916, in reference to Ferry Lake, which is the upper one of this group of lakes?

3. "What effect should be given to the petroleum withdrawal with reference to the State's claim?

4. "Should the survey of 1871 be still followed and deemed controlling in the premises?"

The department, after reviewing the history of the township as affected by the two surveys, court decisions, etc., advised and instructed this office in the premises as follows:

"In the data now before the department there is no evidence from which it can be gathered that Cross Lake or Soda Lake were ever in fact navigable bodies of water. There is nothing from which it

can be determined that said lakes were navigable in 1812, the date of the State's admission, or at any other time. The department is not favorably inclined to the suggestion of the register of the State land office regarding navigability in view of the fact that the State promptly upon the approval of the resurvey of 1871 filed swamp-land list for large areas in the lake beds in this and other townships to the north, and accepted approval of swamp lists, and has treated, dealt with, and claimed these surveyed lake beds as swamp for a great many years. The conclusion of the Acting Attorney
7 General as to the navigability of Ferry Lake, based upon the facts as found by him, does not require the Land Department, upon a very different state of facts and with a different situation present, to hold Cross Lake and Soda Lake to be navigable. For obvious reasons that opinion should not be deemed controlling here or construed as deciding or fixing navigability of the lakes named.

"* * * The Land Department, after the lapse of so many years, during which the State has acquiesced in such resurvey and has accepted and utilized the fruits thereof, will not upon the mere suggestion of the State respecting navigability or rights claimed to have been disregarded and invaded investigate the basis of the survey of these lake beds or examine into the merits of such survey.

"The survey of 1871, having been duly made, approved, and accepted, and being the latest and controlling survey of said T. 18 N., R. 14 W., will be followed in the future, as it has heretofore been in the past, in the adjudication of claims to public lands shown therein.

"The department has held that mineral lands do not pass or inure to the State under its swamp-land grant. The claim of the State is incomplete and inchoate until the fee title is granted by either patent or certification and the mineral character of claimed swamp land can be investigated and determined up to the time the legal title passes. See instructions of May 26, 1918 (46 L. D. 389). In case of State of Florida (47 L. D. —), decided upon appeal March 20, and upon rehearing May 14, 1919, a phosphate withdrawal was held to constitute a bar to the approval of the State's swamp selection. In instructions of April 26, 1915, unreported, the department concluded that there was such an intimate association and relation between oil and natural gas that lands withdrawn because of their oil deposits were also withdrawn for their gas content, and also that an oil withdrawal constituted a report that the lands were valuable for their deposits of natural gas. The reported production of gas in the southern portion of this township and upon neighboring lands amply demonstrates the wisdom of the existing withdrawal. Unless the State is prepared to and will show that its selected swamp lands within the withdrawn area are in fact nonoil and nongas in character, its list after due notice must be rejected and canceled. In this connection see the cases of State of California et al. (41 L. D. 592); State of Wyoming (45 L. D. 590, 46 L. D. 34); Buena Vista Land and Development Company v. Honolulu Consolidated Oil

Company (134 Pac. 1154), all involving State school selections intercepted by oil withdrawals.

"In the further consideration and disposition of swamp-land claims of the State of Louisiana, the views herein set forth will be followed and applied in all cases where properly applicable, and should the State deem itself aggrieved by the ruling of the commissioner in any specific case, an appeal to the department may be taken. In other words, nothing herein shall be construed so as to deprive the State of its day in court before the Land Department with due opportunity to be heard in respect to its claims and asserted rights."

For the purposes of this decision and as an aid to understanding, the facts relative to the two surveys in question will be briefly set forth here.

8 The first survey was made in 1838, and plat thereof approved by the surveyor general March 19, 1839. Other townships of the region were surveyed at about the same time. Among other meandered waters shown upon the plat of said township there appeared a portion of Cross Lake many hundred acres in extent, Cross Bayou, a part of Soda Lake, and Soda Bayou. An extension of resurvey of the township in question was made by Deputy Surveyor J. P. Parsons in 1871. The area in the lakes was, by the resurvey, returned as land duly sectionized and subdivided. The region of Cross Lake was marked on the plat, "Old bed of Cross Lake." The former meander lines of the two lakes were shown upon the plat of resurvey, the areas abutting thereon being lotted. Upon the plat of 1871 the following certificate is found:

"The south boundary of this township was surveyed by Terrell and Kelly and was paid for on the 29th day of June, 1837. The north, east, and west boundaries, sectional lines, and traverse were surveyed in 1838 by J. P. Terrell and A. W. Warren, dep. sur., under contract of 20th November, 1837, and instructions of February 5, 1838, and paid from the third quarter of 1838 to J. P. Terrell and R. N. Kelly. (See account approved August 1, 1838.)

"John P. Parsons, D. S., under contract with E. W. Foster, surveyor general of public lands for the State of Louisiana, dated July 17, 1871, resurveyed from the 10th of August to the 23rd of October, 1871, the first, second, third, fourth, and fifth miles of north boundary, the south boundary except the two first miles, the first and one-half of second mile of the west boundary, and 41.50 chains of the second mile of the east boundary. He also surveyed the sectional lines (except those between 7 and 8, 7 and 18, 8 and 17, 17 and 18, 13 and 24, 18 and 19, 23 and 24, 19 and 30, 35 and 36, and 7.50 chains between secs. 12 and 13); the traverse of Twelve Mile Bayou on both sides through secs. 1, 2, 11, and 14; the northern part of sec. 13, the traverse of Cross Lake through secs. 5 and 16; the traverse of Cross Bayou, except in front of Larking Edwards' claim, and the traverse of Red River in front of sec. 35.

"Subdivisions have been made as far as practicable to correspond with those of the map approved 19th March, 1839."

Upon the plat of 1839 the channel or pass which is now the connecting link, called Twelve Mile Bayou, between Caddo or Ferry Lake and associated ponded waters and Red River, was denominated Soda Bayou and was shown as a body of water separate and distinct from both Cross Lake and Soda Lake. The plat of 1871, upon which the lake areas are eliminated, shows Twelve Mile Bayou as a well-defined and duly meandered channel or waterway through the township, slightly changed perhaps, as to its course, but substantially in the same position as Soda Bayou, indicated upon the earlier plat of 1839.

Originally the mouth of the bayou appears to have been in sec. 24, about a mile above Shreveport, but it is gathered from the reports of Army engineers that some time before 1895 Red River cut back into or enveloped a part of the bayou where their courses parallel each other at a close distance, creating a new mouth in sec. 12, about five miles above the city. At the time of the examination by Capt. J. H. Willard, Corps of Engineers (about May 12, 1911), Twelve
9 Mile Bayou, which was a link in the so-called Jefferson-Shreveport Waterway, had a navigable depth at low water of about one foot. (See page 7, House Document No. 236, 63rd Congress, first session.)

Coming now to the swamp-land claims asserted by the State. In 1852 there was filed with the suveyor general for Louisiana a list No. 2 of selections, which was approved by him August 16 of that year and forwarded to this office.

The following tracts were described therein, necessarily based on the survey of 1838:

(A) All sec. 1, 602.72 acres.

(B) All lots east side of Bayou Soda in sec. 2, or fractional NE. ¼ and fractional SE. ¼, with areas, respectively, of 18.58 and 52.68 acres. (Practically identical with lots 1 and 19, as shown on the part of 1871.)

(C) All lots east side of Bayou Soda in sec. 11, 266.66 acres.

(D) All of sec. 12, 306.20 acres.

(E) All of sec. 13, 549.31 acres.

(F) All lots east side of Bayou Soda in sec. 14, 195.65 acres.

(G) All lots of sec. 23, 257.31 acres. (All lying in east half of section.)

(H) All sec. 24, 176.12 acres.

(I) All lots north side of Cross Bayou in sec. 25, 310.10 acres.

(J) Southwest fractional part of NW. ¼, sec. 25, estimated as 22 acres. (An unlotted area on the north side of Cross Bayou and abutting thereon, shown on the plat of 1871 as lot 11, containing 19.32 acres.)

Those selections were disposed of or adjudicated as follows:

(A) The W. ½, sec. 1, was approved May 23, 1856, supplemental list 1, Natchitoches.

The E. ½, sec. 1, was held for rejection April 11, 1895, for the stated reason that said tract had either been sold, located, or other-

wise disposed of prior to the date of the swamp grant. After due notice the selection was finally rejected July 26, 1895.

(B) The claim to all lots on the east side of Bayou Soda in sec. 2 was approved May 23, 1856, supplemental list 1, Natchitoches.

(C) The claim to all lots east side Bayou Soda in sec. 11 was approved May 23, 1856, supplemental list 1, Natchitoches.

(D) The claim to the west fractional half, sec. 12, was approved May 23, 1856, supplemental list 1.

The northeast fractional quarter, 45.40 acres, was finally rejected July 26, 1895, having been approved to the State for seminary purposes prior to the date of the swamp grant. Lot 6 (fractional SE. ¼), 2.70 acres, south of Red River, was rejected July 9, 1900 (prior sale by the U. S.).

(E) The claim to the W. ½ NE. ¼, west fractional half of the SE. ¼ and SE. ¼ NE. ¼, sec. 13, was approved May 23, 1856, supplemental list 1. The claim to the west fractional half of the section and the E. ½ SE. ¼ was approved January 14, 1860. The fractional NE. ¼ NE. ¼ (or lot 1) was rejected July 26, 1895 (prior sale by the U. S.).

(F) The claim to the east fractional half of sec. 14, east of Bayou Soda, was approved January 14, 1860. (This area, or these tracts, occupy the same relative position as lots 1, 9, 10, and 16 on the plat of 1871.)

10 (G) The claim to the SE. ¼, sec 23, was approved May 23, 1856. Land indemnity was granted for the fractional NE. ¼, sec. 23, April 8, 1899 (list 24).

(H) The claim to all lots of sec. 24 was finally rejected September 8, 1852, the lands having been approved to the State under the seminary grant in 1840.

(I) The claim to all lots on north side of Cross Bayou in sec. 25 was finally rejected July 26, 1895, the lands having been sold or disposed of prior to the swamp-land grant. (Approved to the State for seminary purposes.)

(J) The claim to the southwest fractional part of the NW. ¼, sec. 25, was finally rejected December 18, 1899, the tract having been approved to the State prior to the swamp grant as seminary lands.

It will be seen from the foregoing that all of the selections filed before the survey of 1871 have been disposed of either by approval or by final rejection.

October 31, 1871, the State selected, by list 13, based on the field notes of the later survey, the following-described lands in said T. 18 N., R. 14 W.

(1) All sec. 1, 607.24 acres.

(2) Lots 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 18, and 19, sec. 2, 294.64 acres.

(3) NE. ¼ NE. ¼, sec. 3, 38.32 acres.

(4) NE. ¼ (or lots 1, 2, 6, and 7) and E. ½ SE. ¼ (or lot 8 and SE. ¼ SE. ¼) sec. 11, 165.92 acres.

(5) All sec. 12 west of Red River, 295.38 acres.

(6) All sec. 13, 548.13 acres.

(7) All sec. 14 (lots 1 to 17), except lots 2, 3, 4, 5, 6, and 12, 368.76 acres.

(8) All sec. 23 west of Red River, 568.36 acres.

(9) Lots 1, 2, 3, and 4, sec. 24, west of Red River, 176.02 acres.

(10) All sec. 25 (except lots 13 and 14), 395.68 acres.

(11) All sec. 26 (except lot 5 and W. ½ NW. ¼), 484.24 acres.

(12) S. ½ sec. 27, 319.60 acres.

(13) N. ½ NE. ¼ and lots 1, 6, and 7, sec. 34, 167.12 acres.

(14) Lots 2, 3, and 5, sec. 35, 97.28 acres.

This list, with a number of others, describing lands in Ts. 19 and 20 N., R. 14 W., Ts. 20 and 21 N., R. 15 W., and T. 20 N., R. 16 W., was rejected in its entirety by letter "K" of this office addressed to the register and received at Natchitoches, under date of February 9, 1872, wherein it was stated that:

"Said lists of selections corrective of and additional to the lists formerly made, appear from the plats filed in this office to consist mainly of the beds of the former lakes. Such lakes being at the date of the swamp grant bodies of water and not land, did not pass to the State by said grant. The selection of such tracts as swamp land is, therefore, unauthorized and illegal, and the claim of the State thereto is rejected."

The department, however, subsequently, under date of January 15, 1879, rendered a decision in the matter, holding that, while the plat of 1838 showed the lands involved to be in the lakes, there was no evidence to show that the land was not swamp and overflowed in 1849 and 1850, and that it did not pass as such to the State under the grant. It was accordingly directed that the State's
11 claim be adjusted under the rules applicable to the swamp grant. List 13 was, pursuant thereto, made of record and the selections therein adjudicated and disposed of as follows: It appears, however, as will shortly be shown, that in the meantime the Land Department disposed of a number of the tracts claimed by the State.

Selection No. 1 was canceled October 29, 1897, the claim having been originally asserted August 16, 1852, in list 2, and finally adjudicated, either by approval or rejection, upon basis of the original selection. (See Item "A.")

Selection No. 2 was held for rejection July 12, 1897, as to lots 1 and 19, and finally rejected October 29, 1897, the claim thereto having been asserted August 16, 1852, and finally adjudicated upon basis of the original selection. (See Item "B.")

The claim to lots 2, 3, 4, 7, 8, and 9 was finally rejected March 17, 1890, the office holding (after an examination by a special agent and default by the State at a hearing subsequently ordered) that the lands were not swamp and did not pass under the grant. Said lots 2, 3, 4, 7, 8, and 9 (with lot 6) were subsequently (November 29, 1892) entered as a homestead by William Woolworth and patented January 28, 1897. Lots 10 and 11 were finally rejected July 2, 1900, after due notice to the State under the provisions of the circular of December 13, 1886 (5 L. D. 279), Ira Ray having made homestead

entry 5372 therefor September 21, 1892, subject to the swamp-land claim. Ray's entry, which also included lots 12 and 13, was patented September 7, 1900, lot 5 was approved April 17, 1884, List 8. Lot 18 was held to be swamp land by the field notes May 13, 1916, and an adverse claim (07542 Baton Rouge). Canceled to that extent.

Selection No. 3 was rejected July 26, 1895, the tract having been sold, located, or disposed of prior to the date of the swamp-land grant.

Selection No. 4 was rejected October 29, 1897, as to lots 1 and 7, sec. 11, a claim thereto having been asserted August 16, 1852, and finally adjudicated either by approval or rejection upon basis of the original selection. (See item "C," list of August 16, 1852.) Lots 2, 6, 8, and SE. ¼ SE. ¼ were approved November 9, 1901, list 98.

Selection No. 5 (all sec. 12 west of Red River) was rejected October 29, 1897, claim thereto having been asserted August 16, 1852, and finally disposed of either by approval or final rejection upon basis of the original selection. (See item "D.")

Selection No. 6 was rejected October 29, 1897, a claim thereto having been asserted August 16, 1852, and finally disposed of either by approval or rejection upon basis of the original selection. (See item "E.")

Selection No. 7 was canceled October 29, 1897, to lots 9, 10, and 16, and July 2, 1900, as to lot 1, these tracts in sec. 14 having been originally claimed August 16, 1852, and finally adjudicated upon basis of the original selection. (See item "F.") The claim to lot 7 was finally rejected March 17, 1890, the office holding (after an examination by a special agent and default by the State at a hearing subsequently ordered) that the tract was not swamp and did not pass to the State. Lot 8 of sec. 14 was approved October 21, 1899, and patented to the State December 28, 1899.

The claim to lots 11, 13, 14, and 17, sec. 14, apparently is pending; but the records of this office show that lots 11 and 14 were
12 entered September 3, 1876, by John G. McWilliams (H. E. 1189), commuted to cash June 15, 1878, and patented March 1, 1879; lot 13 (with lot 12) was entered January 11, 1877, by Robert H. Ford (H. E. 1239) and patented November 13, 1884.

Lot 17 was embraced in cash entry 18104, made March 2, 1881, by James L. Robertson, upon which patent issued December 5, 1884.

Selection No. 8 was canceled as to lots 1 and 2 (in NE. ¼) and SE. ¼ October 29, 1897, a claim thereto having been asserted August 16, 1852, and disposed either by approval or final rejection upon basis of that selection. (See item "G.") The W. ½ sec. 23 was rejected March 17, 1890, the office holding (after an examination by a special agent and default by the State at a hearing subsequently ordered) that the tract was not swamp and did not pass under the grant.

Selection No. 9 was rejected and canceled October 29, 1897, a claim to these lands having been asserted August 16, 1852, in list 2, and finally adjudicated either by approval or rejection upon basis of the original selection. (See item "H.")

Selection No. 10 was approved February 13, 1900 (list 77), as to lot 10 (16.28 acres). Lots 1, 2, 3, 4, 5, 6, 7, 8, and 11 are noted as finally rejected October 29, 1897, a claim thereto having been asserted in list 2 and finally adjudicated either by approval or rejection upon basis of the original selection. (See Item "I.") The claim of the State to lots 12 and 15 (south of Cross Bayou) apparently is pending. Lot 12, however, was entered as a homestead May 7, 1872, by Daniel Dodez, commuted to cash (17834), and patented December 10, 18'8. Lot 15 was entered as a homestead February 24, 1872, William D. Wylie, commuted to cash (17830), and patented in 1874. There is no lot 9 in the section according to the plat.

Selection No. 11 was approved October 21, 1899 (list 70), as to lot 3 (or SW. ¼ SW. ¼) and NW. ¼ SW. ¼, sec. 26. Lots 2 and 4 (or E. ½ SW. ¼), were approved November 6, 1902 (list 105). The E. ½ NW. ¼ and W. ½ NE. ¼ were finally rejected March 17, 1890, the office holding (after an examination by a special agent and default by the State at a hearing subsequently ordered) that the lands were not swamp and did not pass under the grant. The NE. ¼ SE. ¼ was embraced in patented cash entry No. 17834 by Daniel Dodez, referred to above. Lots 1, 6, and 7 were embraced in H. E. 697, made March 26, 1872, by Kim Austin, commuted to cash (17831), and patented April 15, 1875. Fractional sec. 26 (south of Cross Bayou or Lake), 65.86 acres (old plat) was patented to James Blair Gilmore and Seth Sheldon, September 1, 1846, cash entry 2009. (Occupying position of lot 5, plat of 1871.)

The E. ½ NE. ¼, sec. 26, was entered as a homestead by William B. Wisenor May 20, 1872, and patented March 30, 1888. The E. ½ NW. ¼, sec. 26, was selected by the State August 24, 1882, as school indemnity, and approved to the State October 4, 1909, list 4, Natchitoches.

The claim of the State is apparently pending to the E. ½ NE. ¼, NE. ¼ SE. ¼, and lots 1, 6, and 7, sec. 26, but all of the lands have heretofore been disposed of by the United States, as indicated herein.

Selection No. 12 (S. ½ sec. 27) was approved November 9, 1901, per list 98, as to the SW. ¼. The SE. ¼ was rejected March 22, 1890. The N. ½ SE. ¼ is embraced in H. E. 3871 by Taylor Williams,
13 made October 22, 1888, commuted to cash and patented August 21, 1890. The S. ½ SE. ¼ said sec. 27, and the N. ½ NE. ¼ sec. 34 were embraced in H. E. 3447, made July 6, 1887, by Young I. Dowden, commuted to cash and patented June 19, 1890. Both of these entries were made subject to the swamp-land claim of the State so far as in conflict. Both entrymen filed nonswamp affidavits as required by rule 1 of circular dated December 13, 1886 (5 L. D. 279). Notice thereof was served on the State and no protest or application for a hearing was filed, and its claim was rejected under rule 4 of said circular.

Selection No. 13 was rejected March 22, 1890, as to the N. ½ NE. ¼ sec. 34. (See Item 12.) The State's claim to lots 1, 6, and 7, sec. 34, appears to be pending. Lots 1 and 6, however, were embraced in

H. E. 740, made June 17, 1872, by May Berry Richardson, commuted to cash and patented May 20, 1873. Lot 7 was embraced in H. E. 722, made May 16, 1872, by Arsene Girod, commuted to cash and patented May 20, 1873.

Selection No. 14 (lots 2, 3, and 5, sec. 35), was approved to the State April 17, 1884, list No. 8.

From the foregoing it would appear that the State's claim is pending under list 13 to lot 18, sec. 2; lots 11, 13, 14, and 17, sec. 14; lots 12 and 15, sec. 25; the E. ½ NE. ¼, NE. ¼ SE. ¼, and lots 1, 6, and 7, sec. 26; and lots 1, 6, and 7, sec. 34. Of these lands all have been disposed of by patent except lot 18, sec. 2. With the issuance of patent the jurisdiction of the Land Department over the lands was divested and terminated, if, in fact, it was not equivalent to an adjudication that the lands entered were of the character and class subject to such entry. (30 L. D. 626.)

April 24, 1901, the register of the State land office, by a communication addressed to the surveyor general for Louisiana, requested that the following-described lands in T. 18 N., R. 14 W., be listed and approved to the State as swamp lands, viz:

Lots 3 and 6, sec. 1; lots 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, and 18, sec. 2; NW. ¼ NE. ¼ and lots 1 and 2, sec. 3; lot 7, sec. 5; lots 2, 3, 4, 5, 6, 7, 8, 9, and 10, sec. 8; lot 6, sec. 9; fractional SW. ¼ and lots 4, 5, and 6, sec. 10; lots 2, 6, and 9, sec. 11; lots 1, 2, 3 5, 6, 7, 8, 11, 12, 13, 14, 15, and 17, sec. 14; fractional NE. ¼, or lots 1 and 4, sec. 16; lot 3, sec. 19; lots 5, 6, 7, 8, 10, SE. ¼ SW. ¼ and S. ½ SE. ¼, sec. 20; SE. ¼ sec. 21, all sec. 22, N. ½ SW. ¼ (affidavits describe N. ½ and SW. ¼ sec. 23); all sec. 26; all sec. 27; all sec. 28.

In support of this request the State register transmitted the affidavit of F. A. Leonard and the joint affidavit of S. H. Sibley, B. H. Bickman, F. S. Cain, T. C. Lewis, A. H. Leonard, and D. C. Heine, alleging the lands to be swamp in character.

The action had in regard to the foregoing application up to February 21, 1905, when a list (No. 93) of selections embracing a portion of the tracts applied for, was officially made of record in this office, is best disclosed by quoting in full letter of September 16, 1904, addressed to the U. S. surveyor general for Louisiana.

"On July 13, 1901, you transmitted the papers relating to the application of the State of Louisiana to have you report as swamp land certain tracts in T. 18 N., R. 14 W., on appeal from your action in the matter.

"In your decision of June 15, 1901, addressed to the register of State lands, you declined to report lots 5, 6, and 10 of sec. 8, for the reason that the field notes of survey do not show them to have been swamp lands; fr'l NE. ¼ of sec. 23, for the reason that the tract was reported in a list dated August 16, 1852; and that part of sec. 26 lying south of the old meander line of Cross Lake, for the reason that the field notes do not show the land to be swamp and overflowed land. As to the rest of the tracts you held that, although they are mostly all shown to be swamp lands, you declined

to report them, for the reason that the former survey of the township shows them to consist of Soda and Cross Lakes.

"By office letter "K" of Dec. 4, 1901, your action was modified and you were instructed, upon the State's providing for the necessary expenses, to appoint an experienced and faithful deputy to examine the land in the field, as provided for by sec. 2 of the act of March 2, 1849 (9 Stat. 352).

"The deputy was appointed, but afterwards his appointment was recalled, and Mr. E. D. Stanford, special agent of this office, was detailed to make the examination. The instructions to the special agent were recalled June 2, 1902, by order of the Secretary and a report on the case was made to the department June 10, 1902.

"The matter remained suspended until January 14, 1904.

"On Jan. 14, 1904, the Secretary directed that the case be reexamined in accordance with the instructions of Oct. 1, 1903 (32 L. D. 270) 'and in the light of this decision,' i. e., the decision of Jan. 14, 1904. A copy of the Secretary's decision was sent to you on February 17, 1904, and the case was remanded for your reexamination in accordance with the departmental decisions; and you were further instructed to submit a list of the tracts found by you to be swamp lands, omitting any tracts theretofore reported as a claim of the State under the swamp-land grants, or finally disposed of under the laws for the disposition of the public lands.

"On March 2, 1904, in a decision addressed to the register of State lands, you took action on the matter and again declined to report the land, as swamp land, assigning the following reasons, viz:

"That the following tracts were approved to the State, June 24, 1840, for seminary purposes: Lots 3 and 6 of sec. 1, being a part of the E. ½ of the section.

"That the following tracts were included in a list of swamp lands reported Oct. 31, 1871:

Lots 4, 7, 8, 9, 10, 11, and 18	Sec. 2
Lots 2 and 6	" 11
Lots 1, 7, 8, 11, 13, 14, 15, and 17	" 14
N. ½ of SW. ¼	" 23
All of (except lot 5 and W. ½ of NW. ¼)	" 26
S. ½	" 27

"That the following tracts have been entered under various laws and the entries have heretofore been carried into patent:

Lots 12 and 13	Sec. 2
Lots 2, 3, 7, 8, 9, and 10	" 8
SW. ¼	" 10
Lot 2	" 14
Lots 5 and 6	" 20
S. ½ of SE. ¼ and SE. ¼ of SW. ¼	" 20

15 "That the following tracts have been approved to the State to aid in the construction of the Vicksburg, Shreveport and Texas Railroad:

Lot 7 of sec. 5, and lot 3 of sec. 19.

"That the NE. fr'l ¼ (or lots 1 and 4) of sec. 16 was reserved for school purposes.

"That the following tract was included in a list of swamp lands reported Aug. 16, 1852:

NE. ¼ ---------- Sec. 23

"That the following tracts are not swamp land by the showing of the field notes:

Lots 5 and 6 ---------- Sec. 8
Lot 5 ---------- " 26

"Eliminating the tracts above described from the list accompanying the application from the State, the following tracts remain:

Lots 6, 14, and 17 ---------- Sec. 2
N.W. ¼ of NE. ¼ and lots 1 and 2 ---------- " 3
Lot 4 ---------- " 8
Lot 6 ---------- " 9
Lots 4, 5, and 6 ---------- " 10
Lot 9 ---------- " 11
Lots 3, 5, 6, and 12 ---------- " 14
Lots 7, 8, and 10 ---------- " 20
SE. ¼ ---------- " 21
All of ---------- " 22
NW. ¼ and S. ½ of SW. ¼ ---------- " 23
W. ½ of NW. ¼ ---------- " 26
N. ½ ---------- " 27
All of ---------- " 28

"After considering the matter and referring to the instructions of Oct. 1, 1903 (32 L. D. 270), and the departmental decision of Jan. 14, 1914 (not reported), you held, in regard to the lands last above described:

"'* * * in view of the fact that the field notes of the survey nearest in point of time to the date of the grant show the lands to be lakes and not swamp or overflowed lands, I must decline to make the selection.'

"The State appealed from your decision.

"The appeal does not allude to any of the tracts mentioned in your decision as having been embraced in the lists of Aug. 16, 1852, and Oct. 31, 1871, nor to those tracts approved to the State for seminary purposes, nor to those tracts that have been patented to claimants under the various laws for the disposal of the public lands, and it is evident, therefore, that the State abides by your decision as regards those tracts.

"It is alleged that you erred in holding in effect that lot 7 of sec. 5 and lot 3 of sec. 19, which had been approved to the State for railroad purposes; and lots 1 and 4 of sec. 16, reserved for schools, ex-

cepted the tracts from the claim of the State under the swamp grant.

16 "Your action in regard to the four lots last above described was proper, as title to lot 7 of sec. 5, and lot 3 of sec. 19 passed to the State July 18, 1896, with the approval for railroad purposes; and the title to the lots in sec. 16 on the date of survey.

"Exception is also taken to your action in not considering the affidavits presented with the case as regards lot 5 and 6 of sec. 8, and lot 5 of sec. 26, which you hold are not shown to be swamp land by the field notes.

"In the matter of the three lots above mentioned, I am of the opinion that you should not consider the affidavits. Whatever may have been the practice relative to the State's initiation of swamp-land claims on the ex parte testimony of its own witnesses in the early days of the adjustment of the claims, it is no longer permissible, since by rule 1 of the Louisiana Instructions of Oct. 1, 1903, the application not being a pending selection made by surveyors general or by agents of the State, in the contemplation of the rule, the following applies:

"'All future selections under said grants will be disposed of according to the showing evidenced by the field notes of survey alone—last subdivision of rule 1.'

"The reason for this is that the Secretary's instructions are based on then existing claims of record, of which he had statements in the form of a brief from the State's attorney and a report from the General Land Office.

"If this view were not in every way correct it would follow that the large number of applications made to you by the State to report lands to this office on the basis of affidavits, and the numerous lists actually reported by you during the period between Mar. 18, 1901, the date of the departmental instructions suspending action on Louisiana claims, and directing that a rule be served on the State's attorney to show cause why the order of this office allowing hearings should not be vacated; and Oct. 1, 1903, the date of the departmental instructions, prescribing rules for the adjustment of the grants applicable to Louisiana, under which it is contended by the State's attorney that all selections made on the basis of affidavits must be approved or patented to the State without inquiry as to the real character of the lands.

"The contention, in effect, gives to the words 'or by affidavits filed at the time of selection under the practice hereinbefore referred to,' in rule 1, all the force and effect of a confirmatory act, such as is the act of Mar. 3, 1857 (11 Stat. 251). The lists of that character reported by you during the period of suspension amount to 218,058.83 acres. That it was the intention of the Secretary's office to confirm these lands is at least questionable, since they were not made of record in this office on Oct. 1, 1903—nor could they be, as the adjustment of the claim was suspended by the Secretary's instructions of Mar. 18, 1901.

"You will therefore not consider the affidavits submitted in this case as proper testimony.

"As to that part of your decision in which you say, after referring to the specific tracts—

"'Therefore, in view of the fact that the field notes of the survey nearest in point of time to the date of the grant show the lands
17 to be lakes and not swamp and overflowed lands, I must decline to make the selection'—

I am of the opinion that you erred, and your decision as to these tracts is reversed, and the appeal, in so far as it relates thereto, is sustained for the following reasons:

"The lands were disclosed by the survey of 1871, and the field notes of that survey, which is the valid and subsisting one, should govern, especially as there was no survey of the lands in 1838, and while the plat of 1838 indicates them to fall in the lake, the field notes of survey have no bearing on the tracts in question. Again, the Secretary's decision of Jan. 14, 1904, holds, in effect, that Soda and Cross Lakes were not permanent bodies of water but were overflowed lands, and that this condition should not be confounded with that of lands covered by an apparent permanent body of water not the result of an overflow, like an inland lake, which depends for its permanency upon other causes.

"You will prepare and submit a list of swamp lands to this office, embracing the tracts which you declined to report because the field notes of the survey of 1838 showed them to be in Cross and Soda Lakes.

"A copy of the list must be sent to the district land officers at Natchitoches and to the register of State lands, retaining, of course, the original in your office.

"Advise the proper State authorities of this decision, allow the usual right of appeal, and in due time make full report in the matter to this office."

The said list, as made up by the surveyor general from the approved field notes of 1871, and eventually made of record, describes the following tracts:

(15) Lots, 6, 14, 16, and 17, sec. 2.
(16) Lots 1, 2, and NW. ¼ NE. ¼, sec. 3.
(17) Lot 4, sec. 8.
(18) Lot 6, sec. 9.
(19) Lots 4, 5, and 6, sec. 10.
(20) Lot 9, sec. 11.
(21) Lots 3, 5, 6, and 12, sec. 14.
(22) Lots 7, 8, and 10, sec. 20.
(23) SE. ¼, sec. 21.
(24) All of sec. 22 (lots 1 and 2, or NW. ¼ NW. ¼, NE. ¼ NW. ¼, S. ½ NW. ¼, NE. ¼, SE. ¼ and SW. ¼).
(25) NW. ¼ and S. ½ SW. ¼, sec. 23.
(26) W. ½ NW. ¼, sec. 26

(27) N. ½, sec. 27.
(28) All sec. 28.

These selections were disposed of or adjudicated as follows:

(15) Lot 6, sec. 2, was finally rejected June 28, 1905, after due notice to the State, said tract (with lots 2, 3, 4, 7, 8, and 9) having been embraced in H. E. of William Woodworth, made November 29, 1892, and patented January 28, 1897. (See item 2, list of October 31, 1871.) Lot 14 was held for rejection April 18, 1916, and finally rejected June 9, 1916, the tract not being shown as swamp by the field notes on file in this office, which were carefully examined. Lot 17 was held for rejection November 12, 1915, and finally
18 rejected May 13, 1916, inasmuch as the field notes on file here did not show the said tract to be swamp in character. Said lots 14 and 17 are embraced in H. E. 08947, made March 27, 1919, by James Wilkinson.

(16) The claim to lots 1 and 2 NW. ¼ NE. ¼, sec. 3, was held for rejection April 18, 1916, and finally rejected June 9, 1916, after due notice to the State, the decision stating that the field notes did not show the lands to be swamp. It appears (however, and this fact was manifestly overlooked when the above action was taken, that under date of September 10, 1906 (K), considering the conflicting claim of the Vicksburg, Shreveport and Pacific Railroad for these tracts, the office held:

"The lands in question were disclosed by the survey of 1871, prior to which time they were covered by the waters of Cross and Soda Lakes, and swamp-land list No. 93 was reported under the instructions contained in departmental decision of Jan. 14, 1904, which decision, in effect, held that Cross and Soda Lakes were not permanent bodies of water but were overflowed lands, and that such condition should not be confounded with that of lands covered by an apparent permanent body of water not the result of an overflow, like an inland lake, which depends for its permanency upon other causes.

"Rule 6 of the instructions of Oct. 1, 1903 (32 L. D., 270), provides that all existing contests or controversies in which there is no claim of actual bona fide preemption or homestead settlement, must be determined according to the showing made by the field notes of survey. The claim of the railroad company was asserted prior to Oct. 1, 1903, and while the swamp land list was not reported until Feb. 15, 1905, the matter had been pending before the department since July 31, 1901, when the case was transmitted to this office by the surveyor general on appeal from his decision of June 15, 1901.

"The swamp claim to the tracts in question is based on the field notes of the survey of Deputy John P. Parsons, made in 1871, and such notes show that greater part of each smallest legal subdivision thereof to be swamp and overflowed land within the meaning of the swamp-land laws, and the railroad company will be allowed sixty days within which to show cause why its selection of the tracts should not be canceled for the reasons above stated. In the event of failure to make such showing within the time allowed, or to appeal

herefrom, the selection will be canceled without further notice and to that end it is hereby held for cancellation."

The railroad company took no appeal from this holding and its selection was finally canceled January 28, 1907. At the same time the local officers were instructed to allow no disposition of the lands without special directions from this office.

The records here show, however, that lot 1 and the NW. ¼ NE. ¼ said sec. 3 were entered September 5, 1916, as a homestead (08056) by William H. Clark. No claim to lot 2, sec. 3, adverse to that of the State is disclosed.

(17) Lot 4, sec. 8, was held for rejection April 18, 1916, and finally rejected June 9, 1916, the tract being shown as nonswamp, according to the field notes on file here. This tract is embraced in H. E. 08147, made November 27, 1916, by James Evins.

19 (18) Lot 6, sec. 9, was, by decision of this office, dated July 8, 1905, held to be swamp, and homestead entry 7097 in the name of William H. Keller, embracing the same was canceled. It appears, however, that on August 18, 1917, John George filed homestead application 08434 for said lot 6 (or SW ¼ NW¼), sec. 9 (52.10 acres), which was rejected by the local officers, because the track was swamp land and inured to the State. September 29, 1917, George filed nonswamp affidavit and appeal, which remains unacted upon here.

May 6, 1918, Tony Carroll filed application 08699 for said tract, together with nonswamp affidavit. The local officers inadvertently allowed this application, report to that effect being made by them under date of November 14, 1918. The entry, however, remains of record. John George has filed a protest in the matter.

(19) Lots 4, 5, and 6, sec. 10, are shown by the field notes on file here to be swamp and were so held by decision of this office, dated March 9, 1905, in the case of Levi Cooper and A. H. Leonard vs. Alfred Hamlin. Hamlin's entry (6934) for said tracts was thereafter canceled. It appears, however, that on April 10, 1916, the local officers allowed homestead entry 07918 therefor in the name of Henry James Lear, subject to the swamp-land claim. The State was advised of such allowance pursuant to circular of December 13, 1886 (5 L. D. 279), and filed objections. Hearing was ordered to be held March 16, 1917, before a United States commissioner at Shreveport, and testimony was submitted accordingly. Letter "G," of March 23, 1917, advised the local officers that under the department's instructions of October 1, 1903 (32 L. D. 270), all controversies as to the character of lands thereafter claimed by the State upon the showing made by the field notes should be decided by the field notes alone, and directions were given to promptly recall all notices of contest theretofore sent out. Inasmuch, however, as testimony in the Lear case had already been taken, the local officers rendered a decision in the matter, holding that the lands were swampy in character at the date of the grant and inured to the State thereunder. Appeal was filed by Lear, and the same is now pending before this office.

(20) Lot 9, sec. 11, is shown by the field notes on file here to be swamp land. November 5, 1917, the local officers allowed John E. Fuller to make homestead entry 08533 therefor, subject to the State's swamp-land claim to be decided by the field notes. Fuller submitted commutation proof January 25, 1919, the same being suspended by the local officers and transmitted to this office for consideration.

(21) Lots 3, 5, 6, and 12, sec. 14, are shown by the field notes here to be swamp in character. Lots 3, 5, and 6 are embraced in H. E. 07998, made June 23, 1916, by Frank Solomon. Said entry was held for cancellation by this office October 13, 1916, and the claimant has filed no appeal, notice having been duly served upon him. Final cancellation of this entry may be effected at any time, removing all conflict with the swamp-land claim.

According to the records here lot 12, sec. 14, was entered in 1877 as a homestead by Robert H. Ford, patent issuing thereon November 13, 1884. (See item 7, list of October 31, 1871.)

20 (22) The claim to lots 7 and 8, sec. 20, was held for rejection by this office March 15, 1905, and finally rejected June 28, 1905, after due notice to the State, the tracts having been entered by Jesse Taylor as a homestead (H E. 2442), December 23, 1882, and patented November 19, 1889. Lot 10, sec. 20, is shown by the field notes on file in this office to be swamp in character. Said tract is embraced in H. E. 08136, made December 17, 1916, by Ed. Martin, subject to the State's swamp land claim.

(23) The SE. ¼, sec. 21, is shown by the field notes on file here to be swamp in character. The lands are embraced in H. E. 08821, made October 25, 1918, by John W. Pike, subject to the swamp-land claim and to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509).

(24) The State's claim to the E. ½ NW. ¼ and E. ½ SW. ¼ sec. 22 was finally rejected by this office September 22, 1909. Henry Kuhn originally made homestead entry for these tracts October 31, 1900. He was called upon in 1905 to file a nonswamp affidavit, and this he failed to do. His entry was accordingly canceled June 15, 1906. Later (May 26, 1909) the entry was reinstated upon a showing that claimant had not received notice of the requirement made. This reinstatement was subject to the swamp-land claim of the State, which was duly notified of the allowance of the entry and of the filing by Kuhn of a nonswamp affidavit. No action was taken, and the swamp claim was finally rejected as above set forth. Kuhn's entry (03908) was patented June 18, 1917.

The NE. ¼ sec. 22 appears by the field notes on file here to be swamp in character. The S. ½ said NE. ¼ is embraced in H. E. 07879, made February 15, 1916, by Walter Ellis Smith. This entry was held for cancellation April 22, 1916, for conflict with the swamp-land claim; and although the entryman did not formally appeal, two communications from him, of date May 20 and 22, 1916, may be considered as such. Final action in the matter has not been taken. April 6, 1916, the same party presented additional homestead applica-

tion (07926) under the act of April 28, 1904, for the N. ½ of said NE. ¼ sec. 22. This application was rejected by the local officers under date of April 30, 1916, because the original entry (07879) had been held for cancellation, as above set forth, and the entryman filed an informal appeal from this ruling. Final action has not been taken. Both these applications were made in accordance with and subject to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509).

The SE. ¼ sec. 22 appears by the field notes on file here to be swamp in character. The S. ½ SE. ¼ is embraced in H. E. 08322 in the name of Thomas Arthur Harvey, made May 21, 1917. The N. ½ SE. ¼ is embraced in H. E. 07881, in the name of Walter Pate Walden, made February 23, 1916. Both entries were made in accordance with and subject to the provisions of the act of July 17, 1914 (38 Stat. 509).

Lot 2, 5 acres (in the NW. ¼ NW. ¼), is embraced in cash entry 2194, Natchitoches, made November 2, 1840, by Dickson Harding et al. The entry was approved for patenting March 22, 1899, but it does not appear that patent has ever issued, although no reason is now apparent why it should not. Appropriate steps looking to the issuance of patent thereon have been taken.

21 Lot 1, 26.84 acres (in the NW. ¼ NW. ¼), the SW. ¼ NW. ¼ and W. ½ SW. ¼, are shown by the field notes on file here to be swamp in character. These tracts are embraced in H. E. 07948, made May 16, 1916, by Thomas A. Harvey, subject to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509).

(25) The selection of NW. ¼ and S. ½ SW. ¼ sec. 23 was held for rejection by this office under date of September 30, 1915, and finally rejected December 3, 1915, the claim having been originally asserted in list 13 of October 31, 1871, and disposed of March 17, 1890, upon basis of that selection. (See item 8 of list referred to.)

It appears, however, and this fact was manifestly overlooked when the action of September 30, 1915, was taken that under date of September 10, 1906, by letter "K" the claim of the State to these tracts, as asserted in list 93, had been considered, the adjudication of March 17, 1890, in effect set aside, and the validity of the selection as asserted in said list 93 affirmed. In this connection the record shows that in 1884 and while the State's earlier swamp claim of October 31, 1871, was pending unadjudicated, the said NW. ¼ and S. ½ SW. ¼ sec. 23 were selected by the Vicksburg, Shreveport and Pacific Railroad, per list 2, dated August 21, 1884, as insuring to it under the grant of June 3, 1856 (11 Stat. 18), upon definite location of its line as of date March 27, 1857; and when in 1890 adverse action was taken against the swamp selection of October 31, 1871, the railroad selection was left intact. But when in 1906 the office had under consideration the reasserted swamp claim based on the field notes of the Parsons survey, the holding quoted in connection with item 16 was made. The railroad took no appeal from this holding and its selection was finally canceled January 28, 1907.

At the same time the local officers were directed to allow no disposition of the lands without special instructions from this office. Manifestly the action of September 30, 1915, was inadvertent and erroneous.

The records here disclose no claim to the E. ½ NW. ¼ and S. ½ SW. ¼, said sec. 23, adverse to that of the State. It appears, however, that on June 24, 1919, the local officers allowed Morris Foster Leeds to make H. E. 09039 for the W. ½ NW. ¼, said section, subject to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509).

(26) The W. ½ NW. ¼ sec. 26 is shown by the field notes on file here to be swamp in character. Said tract is embraced in H. E. 07762, made November 26, 1915, by Jesse M. Jolly, subject to the swamp land claim and to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509).

(27) The claim to the S. ½ NE. ¼ sec. 27 was held for rejection March 15, 1905, and finally rejected June 28, 1905, after due notice to the State, the tract being embraced in H. E. 3871, dated October 2, 1888, in the name of Taylor Williams, commuted to cash and patented August 21, 1890. (See item 12, list of October 31, 1871.)

The claim to the N. ½ NE. ¼ sec. 27 was held for rejection September 11, 1906, and finally rejected January 28, 1907, after due notice to the State, the tract having been approved to it July 8, 1896, per list No. 9, to aid in the construction of the Vicksburg,
22 Shreveport and Pacific Railroad under the grant of June 3, 1856 (11 Stat. 18). The office decision held that inasmuch as the State had received and accepted title under one grant, it was estopped from asserting a claim to the same land under another grant. (28 L. D. 455.)

The NW. ¼ sec. 27 is shown by the field notes of survey on file here to be swamp in character, and it was so held and decided by office decision "K" of July 19, 1905, ruling that homestead entry, made August 14, 1889, in the name of John T. Martin, for the same lands and commuted to cash December 1, 1902, should be canceled. The office held at the same time that the selection of said tract August 21, 1884, by the Vicksburg, Shreveport and Pacific Railroad should be canceled, and such action was taken April 14, 1906. The homestead application (08966) of Rell S. Theriot, for said tract, rejected by you, is now pending before this office on appeal.

(28) The claim of the State to the N. ½ NW. ¼ sec. 28, was held for rejection by this office under date of March 15, 1905, and finally rejected June 28, 1905, after due notice to the State. Said tract was embraced in the homestead entry of Andrew Estes, dated June 23, 1898, upon which final certificate 4439 issued September 1, 1903, and patent November 1, 1904.

The NE. ¼, S. ½ NW. ¼, SE. ¼, and SW. ¼ sec. 28 are shown by the field notes on file here to be swamp in character. The E. ½ NE. ¼ and E. ½ SE. ¼ are embraced in H. E. 07982, made June 12, 1916, by Robert B. Clark, subject to the swamp-land claim. The

W. ½ NE. ¼ and S. ½ NW. ¼ are embraced in H. E. 08043, made September 14, 1916, by Charlie Foster, subject to the swamp-land claim. The W. ½ SE. ¼ is embraced in H. E. 08781, made August 8, 1918, by John M. Farries, jr., subject to the swamp-land claim and to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509). The SW. ¼ is embraced in H. E. 07712, made October 22, 1915, by Joseph W. Eckardt, subject to the swamp-land claim and to the provisions and reservations of the act of July 17, 1914. (38 Stat. 509.)

In conclusion: It is found from the field notes of the survey of 1871 that the lands hereinafter described are swamp or overflowed, and, if nonmineral in character, inure to the State under its grant, and may be patented pursuant thereto when the record has been cleared of adverse claims:

Lot 18, sec. 2. No adverse claim of record.

Lots 1 and 2 and NW. ¼ NE. ¼, sec. 3. Lot 1 and NW. ¼ NE. ¼, claimed adversely by William H. Clark under H. E. 08056.

Lot 6, sec. 9. Claimed adversely by John George under application 08434. Also embraced in erroneously allowed entry 08699 in name of Tony Carroll.

Lots 4, 5, and 6, sec. 10. Claimed adversely by Henry James Lear, H. E. 07918.

Lot 9, sec. 11. Claimed adversely by John E. Fuller, H. E. 08533.

Lots 3, 5, and 6, sec. 14. Claimed adversely by Frank Solomon, H. E. 07998.

Lot 10, sec. 20. Claimed adversely by Ed Martin, H. E. 08136.

SE. ¼ sec. 21. Claimed adversely by John W. Pike, H. E. 08821.

NE. ¼ sec. 22. Claimed adversely by Walter Ellis Smith, H. E. 07879, and application 07926.

23 SE. ¼ sec. 22. S. ½ SE. ¼ claimed adversely by Thomas Arthur Harvey, H. E. 08322, and N. ½ SE. ¼ claimed adversely by Walter Pate Walden, H. E. 07881.

Lot 1, SW. ¼ NW. ¼, and W. ½ SW. ¼ sec. 22. Claimed adversely by Thomas A. Harvey, H. E. 07948.

NW. ¼ and S. ½ SW. ¼ sec. 23. W. ½ NW. ¼ claimed adversely by Morris Foster Leeds, H. E. 09039.

W. ½ NW. ¼ sec. 26. Claimed adversely by Jesse M. Jolly, H. E. 07762.

N. W. ¼ sec. 27. Claimed adversely by Rell S. Theirot, homestead application 08966.

NE. ¼, S. ½ NW. ¼, SE. ¼, and SW. ¼ sec. 28. The E. ½ NE. ¼ and E. ½ SE. ¼ claimed adversely by Robert B. Clark, H. E. 07982. The W. ½ NE. ¼ and S. ½ NW. ¼ claimed adversely by Charlie Foster, H. E. 08043. The W. ½ SE. ¼ claimed adversely by John W. Farries, jr., H. E. 08781.

The SW. ¼ sec. 28. Claimed adversely by Joseph W. Eckhardt, H. E. 07712.

Pursuant, therefore, to departmental instructions of September 2, 1919, in this matter, you will advise the register of the State land office, by copy hereof, that thirty days from notice will be allowed within which to apply for a hearing whereby it may be shown that these lands are nonoil and nongas in character. If such hearing is applied for, you will consult with the chief of field division and fix a time therefor mutually convenient to the Government and the State. You will then proceed to notify each of the above-named homestead entrymen of the contents of this order, advising them that they may appear either in person or by counsel or both and participate in the hearing.

The formal notice to each homestead applicant, if issued by you, will read as follows, description of lands, names and dates to be inserted by you.

"The Commissioner of the General Land Office, in decision dated November , 1919, held that the land embraced in your homestead entry (application) number , viz, (description of land) is shown to be swamp in character by the field notes of survey, upon which the claim of the State of Louisiana was based, and authorized a hearing, on application by the State, for the purpose of determining whether or not the land claimed by you, and other land in said township, is mineral (oil and gas) in character. Application for hearing has been filed and is to be had before (name of officer), at (place), on (date). If the lands are found to be nonmineral in character, they pass to the State under the swamp-land grant (paragraph 7, instructions of October 1, 1903; 32 L. D. 270–278) and your entry (application) must be held for cancellation (rejected), subject to your right of appeal. If mineral in character they do not pass to the State as swamp lands (instructions, May 25, 1918; 46 L. D. 389) and title thereto may be perfected under the homestead or other applicable public-land laws, with reservation to the United States of all oil and gas deposits therein under the provisions of the act of July 17, 1914 (38 Stat. 509). You may appear and participate in the hearing, if you desire, in person or by counsel, or both."

In default of action hereunder by the State within the time limited, its swamp-land claim to the tracts immediately above de-
24 scribed will be rejected and said lands will be held and treated as subject to disposition under the applicable public-land laws. Three copies of departmental instructions of September 2, 1919, supra, are enclosed. Forward one copy to the State with your notice hereunder, one copy, together with a copy of this order, to the chief of field division, and retain the third copy for your files.

Very respectfully,

(Signed) CLAY TALLMAN,
Commissioner.

12–29 aw

Plaintiff's Exhibit "B" to complaint.

DEPARTMENT OF THE INTERIOR,
Washington, September 16, 1921.

STATE OF LOUISIANA { "G"
Baton Rouge 655506, 1917.
Swamp-land claim.
Hearing ordered.
Motion denied.

Motion for exercise of supervisory authority.

Counsel on behalf of the State of Louisiana have filed a paper styled "Motion for rehearing" in this matter, which involves the State's swamp-land claim with respect to certain tracts in T. 18 N., R. 14 W., L. M., Baton Rouge land district, Louisiana. This case was considered and adjudicated in departmental decision of July 18, 1921, unreported, the department there stating:

"It is not perceived that any useful purpose would be subserved by allowing time for a formal motion for rehearing. This decision is declared to be final and conclusive and further proceedings will be in harmony with the views above expressed. The record is transmitted to the Commissioner of the General Land Office."

The motion now presented will be treated and disposed of as a motion for the exercise of supervisory power.

The contentions of counsel are substantially the same as those urged upon appeal. Much stress, however, is placed upon the differences between the act of March 2, 1849 (9 Stat. 352), applicable to Louisiana only, and the general swamp-land act of September 28, 1850 (9 Stat. 519), which are pointed out as follows:

1st. The act of 1849 requires no patent, but merely the approval of a list to be made out, by direction of the Secretary, by the surveyor general, or his deputy, whereas the act of 1850 requires a patent to vest the fee-simple title.

2nd. The act of 1849 requires no selection by the State, no patent, nor any request for the approval of the lands, whereas the act of 1850 provides that patent shall issue at the request of the governor of the State.

25 It is urged that the act of 1849 is applicable and controlling, which act contains no mineral reservation or exclusion and requires no patent; that the grant is one in præsenti and attaches as of the date of the granting act upon the identification of the tracts as swamp and overflowed; that the duty is imposed upon the Secretary to approve the lists of such lands certified by the surveyor general; and that, even conceding that mineral lands are excluded from the grant, the tracts here involved inure to the State because returned and identified as swamp by the survey of 1871, and not reported or withdrawn as oil or gas lands until long after the date of the grant and the identification of the tracts as swamp by survey.

To this the department can not assent. True, the acts of 1849 and 1850 differ somewhat in their terms. This difference, however, in the opinion of the department, is not controlling or of great moment. And conceding that the distinction is vital, it would be of no importance in the instant case, because examination discloses that the State's pending selections in T. 18 N., R. 14 W., are practically all embraced in list 93, the claim being asserted under the provisions of the act of 1850. But the soundness of the State's argument is not conceded. The department takes the position that the act of 1849 does not of its own force, any more than the act of 1850, create a present grant of a complete title in the State. As said in the case of State of Louisiana, decided April 12, 1920 (47 L. D. 366, syllabus)—

"Only upon approval by the Secretary of the Interior under the act of March 2, 1849, granting swamp and overflowed lands to Louisiana, or the issuance of patent under the general swamp act of September 28, 1850, does the fee-simple title vest in the State; prior thereto its title is inchoate and imperfect both in law and in equity."

In connection with the swamp-land grants the following propositions have been considered by this department and are deemed to have been properly determined:

(1) Mineral lands not being expressly included within the terms of the swamp grant either of 1849 or 1850 do not inure to the State. (2) The interest of the State is inchoate and incomplete until title is vested, and the fee simple title only passes upon approval under the act of 1849 and by patent pursuant to the act of 1850. (3) The authority of the Land Department to inquire into and determine all rights and equities claimed as against the Government does not cease until the legal title has passed. (4) A complete and perfected interest corresponding to full equitable title does not accrue to or vest in the State as to any tract until the same has been finally identified as of the class and condition contemplated by the granting act. (5) The question as to the mineral or nonmineral character of claimed swamp land is open for investigation and adjudication up to and until the time of patent under the act of 1850 and up to the date of the Secretary's approval under the act of 1849.

Nothing presented by counsel persuades the department that the holding on appeal in this case is in error. Upon the records of the Land Department the tracts are impressed with a prima facie mineral character by reason of the subsisting petroleum withdrawal. The State has been accorded due opportunity to show that such is not the character of the lands and that they are, in fact, not mineral bearing, failing in which it was held the swamp-land claim must stand rejected.

26

The conclusions reached in the decision rendered upon appeal herein are adhered to and the present motion is denied.

(Signed) E. C. FINNEY,
First Assistant Secretary.

In the Supreme Court of the District of Columbia.

Rule to show cause.

Filed November 10, 1921.

* * * * * * *

Upon consideration of the bill of complaint herein, and upon application in that behalf made, it is, by the court, this 10th day of November, A. D. 1921, ordered:

That Albert B. Fall, Secretary of the Interior, defendant, show cause to this court, if any he has, on Friday, the second day of December, 1921, at 10 o'clock a. m., why preliminary injunction and restraining order should not issue as prayed in said bill of complaint; provided a copy of said bill and of this rule to show cause be served upon said defendant on or before the 14th day of November, A. D. 1921.

A. A. HOEHLING,
Justice.

Nov. 10, 1921. Service this day accepted.

EDWIN A. BOOTH,
C. E. WRIGHT,
Atty. for Deft.

In the Supreme Court of the District of Columbia.

Motion to dismiss.

Filed December 16, 1921.

* * * * * * *

Comes now the defendant in the above-entitled suit and moves to dismiss the bill of complaint herein filed on the following grounds:

(1) That as appears on the face of the bill the title to the lands involved is still in the United States; that the right of the plaintiff to receive title to said land involves questions of law and certain questions of fact; that the United States is entitled to be heard upon said questions; that any efficient decree that the court could accord plaintiff in this suit would involve a determination of said questions in the absence of the United States as a party; that such decree would adversely affect the interests and rights of the United States as the real and substantial party in interest; that the United States is an indispensable party to this suit, but has not consented in this behalf to be sued.

(2) That the bill on its face shows that there are other parties interested in the subject matter of the suit to whom, it is alleged, the defendant will make disposition of the lands involved unless restrained by order of the court in this suit; that such persons are also indispensable parties defendant to this suit, but have not been made parties hereto.

(3) That if plaintiff be entitled to the land in controversy and if the defendant, unless restrained, disposes of said land to other
27 parties as averred, the plaintiff has a plain, adequate, and usual remedy by suit against said patentees after the administrative functions of the defendant, in respect to said land, have ceased.

(4) That the bill on its face shows that it is an attempt to transfer as by appeal or writ of error the actions and decisions of the defendant to the courts for review; that said actions and decisions involved, on the part of the defendant, the exercise of judgment and discretion in the administration of public land laws of the United States, in respect to a matter within his exclusive jurisdiction to determine and make disposition.

ALBERT B. FALL,
Secretary of the Interior.

By his attorney:
C. EDWARD WRIGHT.

In the Supreme Court of the District of Columbia.

Return to rule to show cause.

Filed December 16, 1921.

* * * * * * *

Comes now the defendant by his attorney and, by way of return to the rule to show cause why temporary injunction should not issue as prayed in the bill of complaint, says that he has filed a motion to dismiss said bill of complaint and prays that the same may be taken as due return to the rule herein issued.

ALBERT B. FALL,
Secretary of the Interior.

By his attorney:
C. EDWARD WRIGHT.

In the Supreme Court of the District of Columbia.

Order overruling motion to dismiss.

Filed March 21, 1922.

* * * * * * *

Ordered, This 21st day of March, 1922, that defendant's motion to dismiss the bill of complaint herein filed be, and the same hereby is, overruled, with leave to the defendant to file answer, if so advised, on or before the 20th day of April, 1922.

By the Court:

A. A. HOEHLING,
Justice.

In the Supreme Court of the District of Columbia.

Decree.

Filed April 5, 1922.

* * * * * * *

This cause having come to be heard upon defendant's motion to dismiss plaintiff's bill of complaint was considered by the court and, by order hereinbefore entered on the 21st day of March, 1922, said motion to dismiss was overruled with leave to defendant further to plead, if so advised, on or before the 20th day of April, 1922.

And now on this 5th day of April, 1922, the defendant, by his attorney, comes into court and elects to stand upon said
28 motion to dismiss and to plead no further. Whereupon, the aforesaid premises being considered by the court, it is, on the day last above written,

Adjudged, ordered, and decreed, that the prayers in said bill of complaint contained be, and are hereby, granted, and that a writ of injunction issue herein directed to the defendant as Secretary of the Interior, his successors in office, and all persons claiming to act under his authority or control, commanding him to vacate, recall, or annul so much of the decisions of the Land Department complained of in the plaintiff's bill of complaint as operates to withhold title from plaintiff for any reason dependent upon alleged mineral character, or requires a hearing whereby it may be shown that the following lands, all situate in T. 18 N., R. 14 W., in the State of Louisiana are nonoil and nongas, or otherwise nonmineral in character, to wit:

Lot 18, sec. 2;
Lots 1 and 2 and NW. ¼ NE. ¼ sec. 3;
Lot 6, sec. 9;
Lots 4, 5, and 6, sec. 10;
Lot 9, sec. 11;
Lots 3, 5, and 6, sec. 14;
Lot 10, sec. 20;
SE. ¼ sec. 21;
NE. ¼ sec. 22;
SE. ¼ sec. 22;
Lot 1, SW. ¼ NW. ¼ and W. ½ sec. 22;
NW. ¼ and S. ½ SW. ¼ sec. 23;
W. ½ NW. ¼ sec. 26;
NW. ¼ sec. 27;
NE. ¼, S. ½ NW. ¼. SE. ¼ and SW. ¼ sec. 28;
SW. ¼ sec. 28;

and further restraining him, and them, from making any disposition of said described lands or from taking any action affecting the same save such immediate steps as are necessary to the further and final recognition of plaintiff's rights under the acts of March 2, 1849 (9

Stat. 352) and September 28, 1850, (9 Stat. 519), to the end that evidence of title may be given to the plaintiff as by said acts provided and required; and that the plaintiff recover of the defendant its costs of suit to be taxed by the clerk and to have execution therefor.

By the Court:

A. A. HOEHLING,
Justice.

And now on this 5th day of April, 1922, the defendant by his attorney in open court notes an appeal from the aforegoing decree to the Court of Appeals of the District of Columbia, and the same is hereby allowed, and pending said appeal it is further ordered that the decree aforesaid be, and the same hereby is, stayed, and no writ shall run thereon against the defendant until further order of the court.

By the Court:

A. A. HOEHLING,
Justice.

O. K. as to form.
C. EDWD. WRIGHT,
Atty. for deft.

29 In the Supreme Court of the District of Columbia.

Assignment of errors.

Filed April 5, 1922.

* * * * * * *

The court erred—

1. In failing to dismiss the bill of complaint for want of jurisdiction on the ground that the United States is a necessary party defendant to the suit and that the action can not be tried in is absence.

2. In failing to dismiss the suit on the ground that the several claimants under homestead entries of the land involved are indispensable parties to the suit but are not joined as defendants.

3. In failing to dismiss the suit on the ground that plaintiff has a plain, usual, and adequate remedy after issuance of patents to others in a suit to charge such patents with a trust.

4. In retaining jurisdiction and holding the Secretary of the Interior to answer when on the face of the bill it is apparent that no decree could be rendered for the plaintiff without reviewing the Secretary in a matter wholly within his jurisdiction and involving the exercise of his judgment and discretion.

5. In failing to hold that legal title not having passed out of the United States the Secretary has exclusive jurisdiction to determine status of land and the respective rights, if any, of the State and the

homestead claimants, and that the courts are without jurisdiction to interfere until legal title passes.

6. In failing to hold that under the swamp land grant of 1849 and 1850 to the plaintiff State lands mineral in character are not within the scope of the grant.

7. In ruling that the Secretary of the Interior had no authority to take the action complained of in the bill.

8. In granting the injunction prayed in the bill and requiring the Secretary to disregard his own construction of the acts of 1849 and 1850 and to substitute therefor the views of the court.

9. In granting an injunction requiring the passing of legal title out of the United States to the plaintiff in face of a record showing that proceedings affecting right to the passing of said title were pending in the Land Department, in which final action had not been taken by the defendant.

C. EDWARD WRIGHT,
Attorney for Defendant.

In the Supreme Court of the District of Columbia.

Designation of record.

Filed April 5, 1922.

* * * * * * *

In making up the transcript of record on appeal in the above-entitled suit the clerk will please to include the following:

1. Bill of complaint and exhibits and rule to show cause.
2. Defendant's motion to dismiss.
3. Defendant's return to the rule.
4. Order overruling motion.
30 5. Decree.
6. Notation of appeal.
7. Assignment of errors.
8. This designation.

C. EDWARD WRIGHT,
Attorney for Defendant.

Supreme Court of the District of Columbia.

Clerk's Certificate.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 51, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 39570, in equity, wherein State of

Louisiana is plaintiff and Albert B. Fall, Secretary of the Interior, is defendant, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at the city of Washington, in said District, this 19th day of April, A. D. 1922.

[SEAL.] MORGAN H. BEACH,
Clerk.

LMG/EW

(Indorsed on cover:) District of Columbia Supreme Court. No. 3810. Albert B. Fall, Secretary of the Interior, appellant, *vs.* State of Louisiana.

(Stamped on cover:) Court of Appeals, District of Columbia. Filed Apr. 20, 1922. Henry W. Hodges, clerk.

31 In the Court of Appeals of the District of Columbia.

Tuesday, December 12th, A. D. 1922.

* * * * * * *

[Title omitted.]

Argument of case.

The argument in the above-entitled cause was commenced by Mr C. E. Wright, attorney for the appellant.

32 In the Supreme Court of the District of Columbia.

Wednesday, December 13th, A. D. 1922.

* * * * * * *

[Title omitted.]

Argument of cause.

The argument in the above-entitled cause was commenced by Mr. C. E. Wright, attorney for the appellant, and by Mr. F. W. Clements, attorney for appellee, and was concluded by Mr. C. E. Wright, attorney for the appellant. On motion Mr. P. H. Loughran is allowed to file brief herein as amicus curiae.

33 In the Court of Appeals of the District of Columbia.

[Title omitted.]

Opinion.

Before Van Orsdel, Justice, and Martin and Smith, Judges, United States Court of Customs Appeals.

Mr. Justice VAN ORSDEL delivered the opinion of the court:

The Secretary of the Interior of the United States appeals from a decree of the Supreme Court of the District of Columbia, directing that a mandatory injunction issue requiring him to vacate a decision

withholding title from the State of Louisiana to certain swamp and overflowed lands, because of their alleged mineral character; and restraining the Secretary from disposing of the lands, or taking any action affecting the same, excepting such action as may be necessary to the final recognition of the rights of the State to title therein.

It appears that under the act of March 2, 1849, 9 Stats. L., 352, Congress enacted: "That to aid the State of Louisiana in constructing the necessary levees and drains to reclaim the swamp and
34 overflowed lands therein, the whole of those swamp and overflowed lands, which may be or are found unfit for cultivation, shall be, and the same are hereby, granted to the State." The act further provided: "That as soon as the Secretary of the Treasury (afterwards Secretary of the Interior) shall be advised, by the governor of Louisiana, that that State has made the necessary preparation to defray the expenses thereof, he shall cause a personal examination to be made, under the direction of the surveyor-general thereof, by experienced and faithful deputies, of all the swamp lands therein which are subject to overflow and unfit for cultivation; and a list of the same to be made out, and certified by the deputies and surveyor-general, to the Secretary of the Treasury (Interior), who shall approve the same, so far as they are not claimed or held by individuals; and on that approval, the fee simple to said lands shall vest in the said State of Louisiana, subject to the disposal of the legislature thereof."

By act of September 28, 1850, 9 Stats. L., 519, Congress made a similar grant to the State of Arkansas of the swamp and overflowed lands therein, providing that the Secretary should "make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the governor of the State of Arkansas, and, at the request of said governor, cause a patent to be issued to the State therefor." By a further provision the act was extended to each of the States of the Union in which swamp and overflowed lands may be situated.

35 The lands in controversy were officially surveyed in 1871 and the Commissioner of the General Land Office and the Secretary of the Interior found from the field notes of the survey, as follows: "In conclusion, it is found from the field notes of the survey of 1871 that the lands hereinafter described are swamp or overflowed, and, if nonmineral in character, inure to the State under its grant." This amounted to an approval by the Secretary that they were swamp and overflowed lands, within the provisions of the acts of 1849 and 1850, and would pass to the State, as therein provided, if nonmineral in character.

The Commissioner of the General Land Office in a decision, under date of November 13, 1919, addressed to the Register and Receiver of the Land Office at Baton Rouge, Louisiana, not only found from the field notes of the survey of 1871 that the lands were swamp and overflowed, but instructed the register and receiver, that: "The survey of 1871, having been duly made, approved, and

accepted and being the latest and controlling survey of said T. 18 N., R. 14 W., will be followed in the future, as it has heretofore been in the past, in the adjudication of claims to public lands shown therein." It, therefore, appears that the department has, at all times, recognized the finality of the approval of the survey of 1871, as settling the character of the lands as swamp and overflowed.

This brings us to the chief contention of the Government,
36 that the lands in question are subject to the mineral reservations generally affecting public lands. This is, of course, based upon the assumption that whatever rights Louisiana acrequired were under the grant of 1850, and not of 1849, and that since title under the later act could only pass by patent and, patent not having issued, the title is still in the Government. To sustain this claim it is urged that the title acquired by the State, under the grant, was merely inchoate, and if the land is found to be valuable for mineral, before the perfection of title, it will not vest in the State.

This suggests the proposition whether or not, under the terms of the grant to the State, the question of the mineral or non-mineral character of the lands can be invoked by the Government. The acts of 1849 and 1850 are in terms of present grant. In other words, the grant by the Government to the State of Louisiana was a grant in praesenti. If, therefore, the grant was made under the act of 1849, and not affected by the act of 1850, all that was necessary to confirm the title in the State of Louisiana was the survey of the lands and the approval of the Secretary of the Interior that they were swamp and overflowed in character.

In Louisiana vs. Garfield, 211 U. S. 70, it was urged that the act of 1850 repealed the act of 1849, and that title accordingly
37 would not pass on the mere approval by the Secretary, but by patent as provided in the act of 1850. The court, however, overruling this contention, said: "It is argued that this (act of 1850) so far repealed the special act of 1849 that thereafter the title would not pass on simple approval as provided therein, but a patent was necessary. As we understand, the continuous construction of the department has been to the contrary, and a great number of titles to a very large amount of land would be disturbed if we should accede to this argument. We see no reason for overthrowing the long continued understanding that the special provisions for Louisiana were not affected by a general clause, evidently intended to extend benefits to States that did not enjoy them at the time, not to change the mode of conveyance previously established in a case where the benefit already had been conferred. We may add that we assume that, if approval was sufficient to pass the title, the form of words used by the Secretary of the Interior on December 10, 1895, had that effect, notwithstanding the reference to the act of 1850, whatever may have been his understanding or intent."

The order of December 10, 1895, above referred to, was made with reference to the Fort Sabine Military Reservation, under con-

sideration in the Garfield case, but admittedly coming within the grant of 1849. The order of the Secretary consisted of an indorsement upon a list of these lands that it was "Approved to the
38 State of Louisiana under the act of Congress of March 2, 1849, as supplemented and enlarged by the act of Congress of September 28, 1850, subject to any valid adverse rights that may exist."

The lands here in question, having been granted to the State in 1849, subject to survey and approval by the Secretary, became vested in fee upon the approval of the survey of 1871. The mere fact that, in the respective departmental orders, an exception was made, respecting the mineral character of the lands, in no way clouds, qualifies, limits, or affects the title of the State, unless the lands so granted were subject to the mineral exemptions from time to time fixed by Congress. No mineral reservation was made in the swamp-land grant of 1849 to Louisiana. This grant was made prior to the establishment by Congress of the policy of reserving the minerals generally in the grants of lands known to be mineral in character. The grant being in praesenti could not be affected by subsequent legislation providing for the reservation of minerals. Nor was the land known to be mineral in character at the time of the grant. It is not clear, therefore, in just what way the subsequent discovery of minerals could affect the title of the State. No reservation of minerals was made in the grant, hence, if the lands had been known to be mineral at that time, the situation would not be different.
39 That no intervening reservation of mineral rights by the Government, in the lands granted to the State of Louisana in 1849 and the approval of the survey as swamp and overflowed lands, can avail against the title of the State, is settled by the decision in Cooper vs. Roberts, 18 How. 173. In that case when the State of Michigan was admitted to the Union, it was granted, for the use of schools, Section Number Sixteen of every township of the public lands within the State. It was held that this was a grant in praesenti and when the lands were subsequently surveyed and marked out, the title thereto in fee simple attached and vested in the State; and that the act of Congress of March 1, 1847, 9 Stats. L., 146, providing for the sale of lands containing "copper, lead, or other valuable ores," did not include the school land section there in controversy; nor could a lease of the minerals made by the Secretary of War, confer any right upon the lessee to enter the land or obtain a patent therefor.

It is settled law, not only in the established practice of the Land Department, but by the decisions of the courts, that the rights acquired under a grant of public lands, not known to be mineral at the time they are surveyed, or at the date of the grant, where the survey precedes it, regardless of the time when the matter becomes a subject of inquiry and decision, are not defeated or affected by a subsequent mineral discovery. United States vs. Morrison,
40 240 U. S. 192; United States vs. Sweet, 245 U. S. 563; Wyoming vs. United States, 255 U. S. 489. Likewise the validity

of the grant or selection relates back to the time when it was made. Payne vs. New Mexico, 255 U. S. 367; Payne vs. Central Pacific Railway Co., 255 U. S. 228.

Objection to jurisdiction is interposed by the Government on the ground that this suit can not be maintained because the United States is an indispensable party. This contention has its basis in the assumption that a patent has not issued to the State as required by the act of 1850, and, therefore, title has not passed from the United States. Inasmuch as we have held that patent is not essential to vesting the fee in the State, but that the fee passed with the approval of the survey of 1871, further consideration of this point is unnecessary.

The decree is affirmed with costs.

41 Court of Appeals of the District of Columbia.

Monday, March 5th, A. D. 1923.

* * * * * *

[Title omitted.]

Decree.

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

per Mr. Justice VAN ORSDEL,
March 5, 1923.

Judges James F. Smith and George E. Martin of the United States Court of Customs Appeals sat in this case in the place of Chief Justice Smyth and Justice Robb.

42 Court of Appeals of the District of Columbia.

Tuesday, March 13th, A. D. 1923.

* * * * * *

[Title omitted.]

Order substituting parties appellant.

The retirement of Albert B. Fall and the appointment of Hubert Work, as Secretary of the Interior, having been suggested, it is on motion of Mr. C. E. Wright, attorney for the appellant, Ordered, that Hubert Work, Secretary of the Interior, be and he is hereby made the party appellant herein in place of Albert B. Fall, retired.

43 In the Court of Appeals of the District of Columbia.

January term, 1923.

[Title omitted.]

Motion for rehearing.

Filed March 19, 1923.

Comes now the appellant by his attorneys and moves for a rehearing and reargument in the above entitled cause.

Without regard to the correctness of the court's conclusions generally as to the effect of mineral content upon the swamp-land grant to the State, there are patent in the opinion several statements, which appear to indicate a misunderstanding of certain facts and usages and which, in our opinion, vitally affect the conclusion of the court. It is with a view of correcting such assumptions, if we can successfully point out the errors, that we file this motion.

I.

In the fourth paragraph of the opinion it is stated:

> The lands in controversy were officially surveyed in 1871 and the Commissioner of the General Land Office and the Secretary of the Interior found from the field notes of the survey as follows:

And then is quoted languages taken from the opinion of the Commissioner of the General Land Office dated November 13, 1919. Record, p. 5 at p. 22.

This was the Commissioner's finding, not the Secretary's finding. His name nowhere appears. It is not even alleged in the bill of complaint that the Secretary made this finding. The 6th paragraph of the State's unverified bill of complaint (Note that the record shows that the plaintiff's bill was not sworn to) alleges that the Commissioner, not the Secretary, made this finding and that he required the State to apply for a hearing on the question of mineral character—referring to the decision of November 13, 1919, which the

44 State then and there made its "Exhibit A." Turning to the exhibit, you will see on pp. 23-24, Record, what the commissioner ordered. An appeal was taken from the commissioner's decision by the State—quite naturally an appeal from an adverse order or action; not from any favorable finding. The action adverse to the State was considered by the Secretary. The State in Par. VII of its bill (Record, p. 2) avers that the Secretary, July 18, 1921, "affirmed the action" of the commissioner. The State does not allege that the Secretary affirmed the findings of the Commissioner. Indeed there was reason why it should not: It could not. The Secretary's decision, quoted in full in our Reply Brief, showed that the Secretary passed upon but a single point—the effect of mineral

character upon a swamp-land grant and that he affirmed the decision which ordered the hearing—the adverse action of which the State complained.

True, in Par. 9 of the bill (Record, p. 4), the State in averring that the Secretary's action was in excess of his authority, power, and jurisdiction, introduced that allegation with these words:

> That in ignoring the rights of the State to the lands found by him as a matter of fact to be swamp and overflowed lands and to have been identified as such by the said survey of 1871, etc.

This is not an averment that he had so found. It is a mere introductory recital of an inference the verity of which had not even been previously averred.

We stood on our motion to dismiss advisedly. We understood then, as we understand now, that a motion to dismiss, the new phrase for the old demurrer, admits the truth of only such facts as are well plead; and not matters of inference or argument, however clearly stated. We had the authority of this court in Donaldson v. Wright, 7 App. D. C., 45, 54, to support us. We could have filed an answer affirmatively asserting that the Secretary had never passed upon the swamp character of this particular land. But we were not
45 called upon so to do by any express direct averment in the bill; and, after all, the proof of such an averment, had we made it, would have been found in the Secretary's decision of July 18, 1921, which the court could judicially notice anyway (Santa Fe Pac. Ry. v. Payne, 50 App. D. C., 95, 96), and see for itself.

The intrinsic evidence afforded by the Commissioner's long decision shows that the Secretary had never passed upon the swamp character of this land. Indeed the Com'r's finding, quoted in the opinion of this court, shows that to be the fact; otherwise he would have made no finding but would have referred to a previous finding by his superior, if there had been one, which would have bound him. On the contrary, the whole opinion shows the history of the claim: How a Surveyor General had refused to approve the State's swamp-land list because the survey and field notes of 1838, nearest in point of time to the acts of 1849 and 1850, showed these lands to be covered by lakes; how the State (Record, p. 5) had claimed these "lands" by right of its sovereignty because they were covered by navigable lakes; and how the Commissioner of the General Land Office, September 16, 1904 (Record, p. 13 to p. 17), reversed the Survey General and directed him to make up a list going by the survey and field notes of 1871 and not by the plat of 1838.

It was in this connection that the Commissioner (again, not the Secretary) used the language quoted in the 5th paragraph of the opinion of this court. The Commissioner did not say this in 1919, as evidently the court understands, but the language is quoted from a former Commissioner's decision in 1904; and that in connection with the disregarding of the older survey; i. e., the Surveyor General was to base his list upon the survey and field notes of 1871 rather than

the survey and field notes of 1838, which he had followed because nearest in point of time. But this was not a finding, but a direction to make up a list on which findings ultimately must be made—and made by the Secretary, not the Commissioner alone, before the State benefits.

Now a survey is not approved by the Secretary. Since 1879,
46 surveys have been approved by the Commissioner of the General Land Office. Before that date they were approved merely by the Surveyor General. After April 17, 1879, filing of such plats were not permitted unless and until approved by the Commissioner of the General Land Office. United States v. Morrison, 240 U. S., 192, at p. 210. A survey in itself settles nothing as to the character of land. Field notes, of course, are of evidential value. We quote from Barden v. Northern Pacific Railroad, 154 U. S., 288, at p. 320:

> Some weight is sought to be given by counsel of the plaintiff to the allegation that the lands in controversy are included in the section which was surveyed in 1868 and a plat thereof filed by the surveyor in the local land office in September of that year, from which it is asserted that the character of the land was ascertained and determined, and reported to be agricultural and not mineral. But the conclusive answer to such alleged determination and report is that the matters to which they relate were not left to the surveyor general. Neither he nor any of his subordinates was authorized to determine finally the character of any lands granted or make any binding report thereon. Information of the character of all lands surveyed is required of surveying officers, so far as knowledge respecting them is obtained in the course of their duties, but they are not clothed with authority to especially examine as to these matters outside of their other duties, or determine them, nor does their report have any binding force. It is simply an addition made to the general information obtained from different sources on the subject. In Cole v. Markley, (2 Decisions Dept. of the Interior relating to Public Lands, 847–849,) Mr. Teller, when Secretary of the Interior, in a communication to the Commissioner of the General Land Office, speaks at large of the notations of surveyors, and says: "Public and official information was the object of these notations with a view to preventing entry until the facts are finally determined. They should be, and they are, only prima facie evidence, and subject to be rebutted by satisfactory proof of the real character of the land." The determination of the character of the land granted by Congress, in any case, whether agricultural or mineral, or swamp or timber land, is placed in the officers of the Land Department, whose action is subject to the revision of the Commissioner of the General Land Office, and on appeal from him by the Secretary of the Interior. Under their direction and supervision the actual character of the land may be determined and fully established.

And yet in the opinion of this court, it is stated that "the fee passed with the approval of the survey of 1871." This is in reiteration of the holding in the 10th paragraph of the opinion, wherein it is said that—

> The lands here in question, having been granted to the State in *in* 1849, subject to survey andapproval by the Secretary, became vested in fee upon the approval of the survey of 1871.

We respectfully urge that this can not be so because that survey was approved by one no higher than the Surveyor General.

47 On November 13, 1919, the Commissioner found from the field notes of the 1871 survey—that is, from the evidence there afforded—that the lands were swamp. This is a very different thing from the approval of the survey. But under the swamp land grant, something further was required—the finding by the Secretary and his approval, not the Surveyor General's approval or the commissioner's approval, to the State. This approval by the Secretary takes the form of an approval of a list of lands found by him to be swamp to the State, when patent does not issue. That is, there is a specific approval, in lieu of patent, like that mentioned in Louisiana v. Garfield, where the court assumed that the form of the words used would be sufficient.

Nothing of that sort is claimed in this case at all. Nothing of that sort has been done. Something of that sort must be done, if no patent issues. And if it be done in this case, under the duress of a court's decree, it means simply this: That the Secretary, without himself passing upon the character of the land and without exercising his judgment on that subject, must sign a document so holding, even though were he allowed to exercise the judgment Congress reposed in him, he should be of the opinion that the land should be otherwise classified.

So we respectfully submit that the opinion and judgment of this court is clearly erroneous, at least so far as it holds that the fee simple, or any other species of title, passed with the approval of the survey of 1871. This may be due to a lack of full explanation as to the modus operandi in swamp-land cases in the Land Department. Whether or no patent issues, a list is prepared containing the description of surveyed tracts of land which the State claims and the commissioner finds to be swamp land in character, from evidence adducable. Sometimes there are homesteaders (as in this case) who contest the claim that the land is swamp. But regardless of whether there is an appeal from the Commissioner's finding

48 or not, this list must go to the Secretary for his consideration and action, as the Commissioner can not pass title under the swamp-land grant either on his findings or by his recommendation. A "clear list" of these lands goes to the Secretary. If patent is required, the Secretary approves for patent. If no patent is required, then, as in the Louisiana v. Garfield instance, he endorses over his name on this "clear list," "Approved to the State of Louisiana under the act of Congress of March 2, 1849," etc. This con-

stitutes his adjudication. All that the Commissioner does is to recommend. He certifies that the lands are free and clear from adverse claims and that they are swamp according to the evidence before him and recommends the approval of the list.

After the Secretary has so approved the "clear list," it is sent back to the General Land Office into its permanent files. Whereupon the Commissioner delivers to the Governor of the State a certified copy of this approved clear list, and this certified copy performs the office of a patent where patent does not issue; (As a matter of fact, in this case the State's claim is before the Department under the 1850 grant, wherein patent does issue). This certification by the Commissioner of the copy of the recorded original signed by the Secretary as having the office of a patent was authorized by the act of August 3, 1854, 10 Stat. 346. See Weeks v. Bridgman, 159 U. S., 541, at p. 547.

II.

In the final paragraph of the opinion of this court, it is said:

> Objection to jurisdiction is interposed by the Government on the ground that this suit can not be maintained because the United States is an indispensable party. This contention has its basis in the assumption that a patent has not issued to the State as required by the act of 1850, and, therefore, title has not passed from the United States.

We fear we did not make the point very clear to the court. As this case involves a State's list filed under the act of 1850, not 1849 (see our brief, last paragraph on pp. 5 and 6, and next-to-last paragraph on p. 7), our talk was mainly about patent and the status of affairs prior to issue of patent. But in its legal aspects there is no
49 difference between a patent and the certification to the State hereinbefore described. The "certification" is in lieu of the usual patent. Under the act of 1854, it has the same effect. The point in this case is that title has not passed and hence the United States is an indispensable party to the suit. Whether legal title goes on issue of patent or on certification, there is naught but an inchoate title in the State unless and until the Secretary identifies—i. e., signs and approves the clear list by which he "identifies" and adjudicates the land therein listed to be swamp in character. While the State's title is inchoate, the State has no right to be in court litigating its right to complete title unless the United States is party defendant to the suit. That is our point—supported we believe by the authorities cited.

Not alone on this point but on the aspects of the case in its "present grant" feature, we quote from Little v. Williams, 231 U. S., 335, at p. 339:

> Although the terms of the first section of the act denote a present grant to the State of the "swamp and overflowed lands, made unfit thereby for cultivation," the second section lays upon the Secretary of the Interior the duty of identifying and listing

the lands coming within the terms of the grant and of causing patents therefor to be issued to the State "at the request of" its Governor, and then declares: "and on that patent the fee simple to said lands shall vest in the said State," subject to the disposal of its legislature. It became necessary, in Rogers Locomotive Works v. Emigrant Company, 164 U. S. 559, to determine the meaning and effect of the act in the light of these provisions and of prior decisions, and it was there said (p. 570): "While, therefore, as held in many cases, the act of 1850 was in praesenti, and gave an inchoate title, the lands needed to be identified as lands that passed under the act; which being done, and not before, the title became perfect as of the date of the granting act." And again (p. 574): "It belonged to him (the Secretary of the Interior), primarily, to identify all lands that were to go to the State under the act of 1850. When he made such identification, then, and not before, the State was entitled to a patent, and 'on such patent' the fee simple title vested in the State. The State's title was at the outset an inchoate one, and did not become perfect, as of the date of the act, until a patent was issued." What was there said has since been regarded as the settled law upon the subject. Michigan Land & Lumber Co. v. Rust, 168 U. S. 589, 592; Brown v. Hitchcock, 173 U. S. 473, 476; Niles v. Cedar Point Club, 175 U. S. 300, 308; Ogden v. Buckley, 116 Iowa, 352; Birch v. Gillis, 67 Missouri, 102; Carr v. Moore, 119 Iowa, 152, 159.

As this land was never so identified, and, so far as appears, its identification was never even requested by the State, it follows that, even if at the date of the act the land was in fact swamp or overflowed, the State never acquired more than an inchoate title to it, a claim which was imperfect both at law and in equity.

50 If the court will read into this excerpt "certification" wherever the word "patent" occurs, our contention will be perceived.

We assume that the court did not overlook the fact that Cooper v. Roberts, so far as it has any bearing upon this case, stands condemned by United States v. Sweet, 245 U. S. 563, 573. We press no further argument on the question of mineral character, however. That is a matter susceptible of wide difference in opinion. But we do think we have pointed out manifest errors in the opinion which the court will desire to correct while the case is still within its jurisdiction. And whatever may be the outcome, it is manifest that this case will go to the Supreme Court on the appeal of the losing party. At least, if this motion should be denied, it is our intention to ask the allowance of an appeal.

For this reason, we pray that mandate may be stayed until further order of the court.

But we earnestly urge that the court grant our motion to rehear this case, which we file in the firm conviction that its points are well taken.

EDWIN S. BOOTH,
Solicitor.
C. EDWARD WRIGHT,
Attorney.

51 [File endorsement omitted.]

52 In the Court of Appeals of the District of Columbia.
Friday, March 23rd, A. D. 1923.

* * * * * * *

[Title omitted.]

Order denying rehearing and staying mandate.

On consideration of the motion for a rehearing and stay of mandate in the above entitled cause, it is ordered that a rehearing be overruled and that the mandate be stayed until further order.

53 In the Court of Appeals of the District of Columbia.

January term, 1923.

[Title omitted.]

Petition for allowance of appeal.

Filed Apr. 4, 1923.

Now comes Hubert Work, Secretary of the Interior, appellant in the above entitled cause, and respectfully shows that on or about the 5th day of March, 1923, this court entered a judgment herein in favor of the appellee and against the appellant, affirming the decree of the Supreme Court of the District of Columbia in favor of appellee, in which judgment of the Court of Appeals certain errors were committed to the prejudice of the appellant, some of which was brought to the court's attention by the appellant's motion for rehearing denied by this court on the 23d of March, 1923, and all of which will appear more in detail from the assignment of errors filed with this petition.

The appellant further shows that the judgment of the Court of Appeals of the District of Columbia in this case is subject to review by the Supreme Court of the United States under the provisions of paragraph 5 of section 250 of the Judicial Code, in that the validity of an authority exercised by the appellant under the United States as Secretary of the Interior, and the scope of power exercised by him as such Secretary of the Interior were drawn in question.

The appellant further shows that the judgment of the Court of Appeals is reviewable by the Supreme Court of the United States under the provisions of paragraph 6 of said section 250 of the Judi-

cial Code, in that the construction of acts of Congress, to wit,
54 the act of March 2, 1849 (9 Stat., 352), and the act of September 28, 1850 (9 Stat., 519), was drawn in question by the appellant, who was the defendant below, who asserted and relied upon a construction of said statutes contrary to that placed thereon by the Court of Appeals in its judgment herein.

Wherefore appellant prays that an appeal may be allowed to the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to said Supreme Court of the United States, and that the mandate of this court be stayed until further order.

HUBERT WORK,
Secretary of the Interior.

By his attorneys:

EDWIN S. BOOTH,
Solicitor.
C. EDWARD WRIGHT,
Attorney.

55 In the Court of Appeals of the District of Columbia.

January term, 1923.

[Title omitted.]

Assignment of errors.

Filed April 4, 1923.

And now comes the appellant by his attorneys and says that in the record and proceedings of the Court of Appeals in the above-entitled cause, and in the rendition of the final judgment herein, manifest error has intervened to the prejudice of said appellant, in this, to wit:

1. That the court erred in affirming the decree below.
2. That the court erred in reviewing the appellant in his construction of a statute devolving upon him to administer.
3. That the court erred in deciding and holding that the United States was not an indispensable party to the suit.
4. That the court erred in failing to hold that this is in effect a suit against the United States.
5. That the court erred in failing to hold that the homestead settlers were indispensable parties to the suit.
6. That the court erred in failing to hold that the Secretary had yet jurisdiction in the subject matter of the suit and authority to require the hearing ordered by the Commissioner of the General Land Office herein.
7. That the court erred in failing to hold that appellant had not passed upon the swamp-land character of the land in controversy.

8. That the court erred in holding that the fee title to the land in controversy passed to the State of Louisiana with the approval of the survey of 1871.

56 9. That the court erred in failing to hold that under the acts of March 2, 1849, and August 3, 1854, certification of a clear-list approved by the Secretary of the Interior is necessary to pass title to the State under its swamp-land grant, and that until that is done, the State's title is merely inchoate.

10. That the court erred in holding, in effect, that the State takes title to swamp or overflowed lands even if such lands be mineral in character.

Wherefore the appellant prays that for the errors aforesaid and other errors appearing in the record of the said Court of Appeals in said cause, to the prejudice of the appellant, the judgment of said Court of Appeals may be reversed, annulled, and for naught esteemed, and that the said cause be remanded to the said Court of Appeals with instructions to reverse the decree of the Supreme Court of the District of Columbia in said cause rendered, or for such further proceedings in said cause as may be determined by the Supreme Court of the United States, to the end that justice may be done in the premises.

HUBERT WORK,
Secretary of the Interior.

By his attorneys:

EDWIN S. BOOTH,
Solicitor.
C. EDWARD WRIGHT,
Attorney.

57 [File endorsement omitted.]

58 In the Court of Appeals of the District of Columbia.

Saturday, April 7th, A. D. 1923.

* * * * * * *

[Title omitted.]

Order allowing appeal.

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States in the above-entitled cause, it is ordered that said appeal be and the same is hereby allowed as prayed.

59 [Citation in usual form showing service on F. W. Clements, filed April 10, 1923. Omitted in printing.]

60 [File endorsement omitted]

61 In the Court of Appeals of the District of Columbia.

[Title omitted.]

Designation.

Filed April 9, 1923.

In addition to the matters usually included in the transcript of record on appeal the clerk will please to include in his preparation of said transcript appellant's motion for rehearing herein filed with notation of the court's action thereon.

C. EDW. WRIGHT,
Attorney for Appellant.

[File endorsement omitted.]

62 Court of Appeals of the District of Columbia.

Clerk's certificate.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 61, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Hubert Work, Secretary of the Interior, Appellant, vs. State of Louisiana, No. 3810, April Term, 1923, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 10th day of April, A. D. 1923.

[SEAL.] HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

(Indorsed:) File No. 29,543. District of Columbia, Court of Appeals. Term No. 289. Hubert Work, Secretary of the Interior, Appellant, vs. State of Louisiana. Filed April 13th, 1923. File No. 29,543.

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